United States Court of Appeals

for the Second Circuit

APPENDIX

75-7128

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

JUN 30 1975

JUAN SANCHEZ LUGO,

Plaintiff-Appellant,

v.

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL, EDWARD R. MURPHY, JERRY SCHNEIT, ROW SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANYOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

MENAGH, TRAINOR & ROTHFELD
130 East 40th Street
New York, New York 10016

Attorneys for Appellees

JOHN C. GRAY, JR.
BROOKLYN LEGAL SERVICES
CORPORATION B
152 Court Street
Brooklyn, New York 11201

Of Counsel:
DAVID S. PREMINGER
LEGAL SERVICES FOR THE ELDERLY POOR
2095 Broadway
New York, New York 10023

Attorneys for Appellant

COUNSEL PRESS, INC., 55 West 42nd Street, New York, N.Y. 10036 • PE 6-8460

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- x

JUAN SANCHEZ LUGO, :

Appellant, :

-against- :

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, et al., : Docket No. 75-7128

Appellees. :

- x

JOINT APPENDIX

JOHN C. GRAY, Esq.
Brooklyn Legal Services
Corporation B
152 Court Street
Brooklyn, New York 11201
(212) 855-8003

DAVID S. PREMINGER, Esq.
Legal Services for the Elderly
Poor
2095 Broadway, Room 304
New York, New York 10023
(212) 595-1340

TABLE OF CONTENTS

Page

PHOTOCOPY OF THE DOCKET ENTRIES ..... A- 1

COMPLAINT ..... A- 4

DEFENDANTS' 9-G STATEMENT IN SUPPORT OF MOTION TO DISMISS AND FOR SUMMARY JUDGMENT, 9/17/73 ..... A-12

DECISION DENYING DEFENDANTS' MOTION TO DISMISS AND FOR SUMMARY JUDGMENT, 366 F. SUPP. 99 (1973) A-15

ANSWER A-20

DEFENDANTS' 9-G COUNTER-STATEMENT IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT, 5/22/74; A-22

PAGE 5, PARAGRAPH NUMBERED 11 THEREOF, OF DEFENDANTS' BRIEF IN SUPPORT OF THEIR CROSS MOTION FOR SUMMARY JUDGMENT, 5/22/74 ..... A-25

COLLECTIVE BARGAINING AGREEMENT PURSUANT TO WHICH THE DEFENDANT PLAN OPERATES, 9/23/70 ..... A-26

ANNUAL REPORT OF THE DEFENDANT PLAN FOR THE YEAR ENDED APRIL 30, 1973 ..... A-50

ANNUAL REPORT OF THE DEFENDANT PLAN FOR THE YEAR ENDED APRIL 30, 1972 ..... A-66

ACTUARIAL VALUATION AND REVIEW OF THE DEFENDANT PLAN FOR THE YEAR ENDED APRIL 30, 1970 ..... A-81

DEFENDANT RETIREMENT FUND'S PLAN DESCRIPTION DATED 1970 ..... A-116

LETTER TO PLAINTIFF'S ATTORNEY FROM DEFENDANT ROTH, DATED 4/5/73 .....A-133

SURVEY BY THE UNITED STATES DEPARTMENT OF LABOR OF THE 100 LARGEST RETIREMENT PLANS, 1960-71, RELEASED JANUARY, 1973 .....A-135

PLAINTIFF'S APPLICATION FOR A DISABILITY PENSION A-182

PLAINTIFF'S WRITTEN APPLICATION SAYING HE WAS MOVING TO PUERTO RICO A-183

UNION LETTER WARNING PLAINTIFF OF DUES DELINQUENCY A-184

ACTION OF SOCIAL SECURITY APPEALS COUNCIL ON PLAINTIFF'S REQUEST FOR REVIEW A-185

PLAINTIFF'S "APPLICANT CONTACT RECORDS" ISSUED BY THE NEW YORK STATE EMPLOYMENT SERVICE A-186

PLAINTIFF'S "APPLICANT CONTACT RECORDS" ISSUED BY THE NEW YORK STATE EMPLOYMENT SERVICE A-187

LETTER FROM EMILY C. SIMPSON, M.D., 12/23/71 ..... A-188

LETTER FROM EMILY C. SIMPSON, M.D., 5/22/72 ..... A-189

PLAINTIFF'S MEDICAL HISTORY AS REPORTED BY THE MEDICAL DEPARTMENT OF THE DEFENDANT RETIREMENT FUND, 5/24/72 ..... A-190

LETTER FROM W. T. KRIETE, M.D., to H. GREENBLATT, 5/22/72 ..... A-197

PRE-TRIAL ORDER A-198

TRIAL TRANSCRIPT A-211

DECISION AND FINAL ORDER DISMISSING THE COMPLAINT A-396

LETTER FROM PLAINTIFF'S ATTORNEY TO JUDGE BARTELS, 10/29/74 ..... A-411

NOTICE OF APPEAL A-413

LETTER FROM W. T. KRIETE, M.D. TO NORMAN ROTHFELD, 10/17/74 ..... A-415

D. C. 736 663 DOCKET

JUAN SANCHEZ LUGO,

Plaintiff,

-against-

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL II, EDWARD R. MURPHY, JERRY SCHNEIT, ROLAND J. SIMES, WALTER TEITELBAUM, WALTER WEISS, ALBERT BAUER, [illegible] BERMAN, JOSEPH BONO, STEPHEN KANYCOSKY, DANIEL MRUKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HENRY VAN ARSDALE, JR., and CARLOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry,

Defendants.

ATTORNEYS

For Plaintiff:

John C. Gray, Jr.
152 Court Street
Brooklyn, N.Y. 112
855-8003

For Defendant: HAROLD ST
70 Pine Street
New York, N.Y. 10
WH4-9177

RTLEY ACT
MENT &

DATE	DEFENDANT'S ACCOUNT	RECEIVED	

ABSTRACT OF COSTS

TO WHOM DUE	AMOUNT

RECEIPTS, REMARKS, ETC.

A-1

73C 663 JUAN SANCHEZ LUGO v. EMPLOTEES RETIREMENT FUND

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED EMOLUMENT RETURN
5-11-73	By Neaher, J.--Order granting pltff leave to proceed in this action in forma pauperis filed.	1
5-11-73	Complaint filed. Summons issued.	2
5-23-73	Summons returned & filed./Executed.	3
6/11/73	By Bartels,J.-Order dtd. 6/8/73 extending time of defts. to answer to 6/22/73 filed.	4
6-26-73	Notice of motion and memo of law to dismiss complaint ret 7-6-73 filed.	5/6
7-11-73	Pltff's memorandum in opposition to motion to dismiss complaint filed.	7
7-26-73	Reply memorandum in support of motion to dismiss filed.	8
9-18-73	Defts' Rule 9(g) statement filed.	9
9-14-73	Before BARTELS, J.--CAse called. Deft Employees Retirement Fund's motion to dismiss. Decision reserved. Adjd to 9-28-73 at 10 am.	
9-21-73	Pltff's counterstatement pursuant to Rule 9-G of the rules of court & pltff's supplemental memorandum of law on summary judgment filed.	this 10/11
9-28-73	Before BARTELS, J. - Case called & adj'd without date.	
10-1-73	By BARTELS, J. - Memorandum and order dtd 10-11-73 denying defts' motion to dismiss complaint filed. (p/c mailed to attys)	12
10/	ANSWER of defts filed.	13
12/3	Before BARTELS,J.- Case called- Status Report set down for 1/30/74-All discovery to be completed by that date.	
1-[illegible]-74	Notice of interrogatories to party filed.	14
1/30/74	Before BARTELS,J.- Case called- Status Report set down for 3/21/74	
3-21-74	Before BARTELS, J. - Case called. Trial set down for 6-10-74 @ 10:00.	
4/16/74	Letter of Norman Rothfeld to Judge Bartels dtd 4/15/74 re: status report filed.	15
/22/74	Copy of letter dated 4/17/74 filed from D. Preminger to Mr. Lugo	16
/24/74	Copy of letter dated 4/23/74 filed from D. Preminger to Lugo	17
5/6/74	Pltff's Motion for Summary Judgment, ret. 5/17/74 filed	18
5/6/74	Pltff:s Brief in Support of his motion for summary judgment	A-2

CIVIL DOCKET 73 C 663 J.SANCHEZ LUGO VS. EMPLOTEES RETIREMENT FUND, E

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AM RECD EMOL RE
5/28/74	Deft's Brief in Support of Motion for Summary Judgment filed.			20
5/31/74	Before BARTELS,J.- Case called- Pltff's motion for summary judgment argued-Denied-Deft's cross-motion for summary judgment argued-Denied-Trial set down for 10/21/74			
5/31/74	Consent to change atty filed.			21
9-20-74	~~Before TRAVIA,J.- Case called for hearing on motion for~~			
10/21/74	Before BARTELS,J.- Case called- Trial ordered and begun- Deft's motion to dismiss-Decision reserved-Pltff rests Deft rests-Trial concluded-Decision reserved.			
12-31-74	letter dtd 11-20-74 to J. Bartels from David S. Preminger filed.			22
1-20-75	By BARTELS, J.-Order dtd 10-7-75 dismissing the complaint filed. (p/c mailed)			23
2-14-75	Notice of Appeal filed. Copy sent to C of A.			24
2-19-75	Notice of motion for an order granting pltff a transcript of the trial in this action free of charge filed.			25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO, Plaintiff, -against- THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL II, EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND J. SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANYOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry, Defendants.	CIVIL ACTION NO. 73 C 663 COMPLAINT

I. PRELIMINARY STATEMENT

This is an action for a declaratory judgment, injunctive relief and damages for the defendants' improper and unlawful actions against the plaintiff in denying him his right to a retirement or disability pension in violation of federal labor laws and of defendants' common law duty as trustees.

II. JURISDICTION

1. Plaintiff is a citizen and resident of the state of New York, County of Kings, and of the United States.

2. This court has jurisdiction of this action under §302 of the Taft Hartley Act, 29 U.S.C. §186.

3. Jurisdiction is also conferred on this court by 28 U.S.C. §1331. The amount of controversy, exclusive of interest and costs, exceeds the sum of $10,000.00. This court has pendent jurisdiction over plaintiff's remaining claims.

4. Declaratory and injunctive relief is authorized by 28 U,S.C., §2201 and 2202 and by rules 57 and 65 of the Federal Rules of Civil Procedure.

III. PLAINTIFF

5. Plaintiff is an electrical worker. He was, until recently, a member of the International Brotherhood of Electrical Workers Union, Local No. 3, New York City. As such, he was a participant in and a beneficiary of the defendant retirement pension plan.

IV. DEFENDANTS

6. The defendant Employees Retirement Fund of the Illumination Products Industry is a retirement pension trust operating under the authority and requirements of §302(c)(5) of the Taft Hartley Act, 29 U.S.C. §186(c)(5).

7. The defendant, CHARLES F. ROTH, is the Assistant Executive Secretary of said retirement fund and is responsible for its administration.

8. The remaining defendants are all trustees of said retirement fund and are responsible for its administration.

V. STATEMENT OF FACTS

9. Plaintiff has been a participant in the defendants' retirement pension and benefit plan since 1955. During the period 1955 through 1972, plaintiff acquired an aggregate of 195 months of credited employment under the pension plan.

10. Plaintiff is a victim of diabetes in a particularly severe form. To date, his physician has not been able to control his condition despite a strict diet and medication. His diabetes has become progressively worse and his eyesight is now adversely affected. All of this has made it impossible for him to engage in any gainful employment and he is presently a recipient of public assistance.

11. The defendant retirement plan provides two kinds of benefits relevant hereto. First, the plan provides a retirement benefit for qualified participants. The requirements for this pension are that the participant remain employed or available for employment by contributing employers, attain age60, and have an aggregate of 90 months employment in the ten years immediately preceeding the filing of his application. If a participant ceases to be employed or available for employment, participation ceases and if the participant again becomes employed by a contributing employer, his participation commences as of the

date of his re-employment and he has to meet the eligibility requirements then in effect for new participants.

12. Second, the plan also provides a disability pension for participants who have been employed or available for employment by contributing employers for at least ten years and have an aggregate of 90 months employment for the ten years immediately preceding the filing of an application. In addition applicants are required to be permanently disabled to the extent that they can no longer secure gainful employment in any occupation.

13. Determinations as to credited employment and as to disability are made by a joint retirement committee composed of union and employer representatives. According to the agreement creating the defendant plan, all decisions of this committee are final and a rejected applicant has no right or claim of any kind against the committee, the union, or the employer, either administrative or judicial, to review such a decision.

14. During 1972, the plaintiff was advised by officers of his labor union that due to his deteriorating physical condition, particularly his poor eyesight, he was no longer qualified to do electrical work and he was therefore required to terminate his union membership. Without such union membership, it is virtually impossible for the plaintiff to find work in his field of skill.

15. During 1972 following the union action described in paragraph 14 above, plaintiff applied to the defendants

for a disability pension. This application was denied on the ground that although the plaintiff was eligible in terms of covered employment, he was found to be, in the opinion of defendants' physician, not disabled.

16. At the same time, defendant apparently separately determined plaintiff could never become eligible for retirement benefits because he could not meet the requirements outlined in paragraph 11 above.

17. The plaintiff is now a recipient of public assistance and has lost all prospect of any pension benefits. He has lost the protection of union membership. He has suffered damages in the amount of $25,000.00.

18. The actions of the defendants in refusing to award the plaintiff either a disability or a retirement pension have caused him great and irreparable injury.

VII CLAIMS FOR RELIEF

First Claim for Relief

19. Section 302(c)(5) of the Taft Hartley Act, 29 U.S.C. §186(c)(5) requires in part that the defendant pension trust be operated

> for the sole and exclusive benefit of the employees of such employer, and their families and dependents... (or of such persons in his employ or in the employ of others making similar contributions).

A trust action which is inconsistent with this purpose is unlawful and subject to federal court review. The action of the defendants in denying plaintiff's application for

disability benefits, notwithstanding extensive medical evidence as to plaintiff's disability and notwithstanding the fact that plaintiff is receiving public assistance because he is unable to work, was arbitrary and capricious. Such action was accordingly unlawful under the terms of the statute and is subject to being overruled by this court. The question of unlawful action under this section is one of federal common law which should be developed by federal courts.

Second Claim for Relief

20. The defendant denied the plaintiff's application for disability benefits without granting the plaintiff a hearing and without giving him the opportunity to present medical evidence. The sole method for determining disability applications under the defendant's plan is by examination by a physician appointed by the defendant. The decision of the committee based upon this recommendation, is, according to the plan, not reviewable by any agency or court. This procedure violates due process, is arbitrary and capricious, and violates the plaintiff's rights under 29 U.S.C. §186(c)(5).

Third Claim for Relief

21. The action of the defendant in denying the plaintiff's application for disability benefits notwithstanding the clear weight of the evidence to the contrary and without granting him a hearing in accordance with fundamental due process requirements is a violation of the common law duty owed to the plaintiff by the defendant trustees in their fiduciary relationship to him.

Fourth Claim for Relief

22. The defendant has a duty under 29 U.S.C. §186 (c)(5) to create and operate a pension fund for the sole and exclusive benefit of the plan participants. The requirements the defendant has established are such that only those who are able to work up to the age of 60 in covered employment are eligible. The effect of this structure is to ignore the great majority of the years in a typical working career in determining pension eligibility. This distinction is illogical and arbitrary. It is unlike many plans which provide that after a certain number of years of service, the right of pension vests regardless of the worker's age at that time, with actual payment of benefits to start upon reaching retirement age. This is inherently unfair in structure and operation and violates the trustees' statutory and common law duties towards the plaintiff.

VII. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this court:

1. assume jurisdiction of this case and set it down promptly for hearing;

2. enter a final judgment declaring that the refusal of the defendant to award plaintiff disability or retirement benefits is unlawful and void;

3. enter a final judgment enjoining the defendants to grant the plaintiff's application for disability or

retirement benefits or, in the alternative, requiring the defendant to establish procedures which provide the plaintiff a full hearing in accordance with due process of law and the right to judicial review of any decision which is made;

4. enter a judgment awarding the plaintiff damages in the amount of $25,000.00, both compensatory and punitive, with costs and interest, together with such other and further relief as may be just.

JURY DEMAND

Plaintiff respectfully demands a trial by jury.

Dated: New York, New York

Respectfully submitted,

John C. Gray, Jr.
David S. Preminger, Of Counsel
Brooklyn Legal Services, Corp. B
152 Court Street
Brooklyn, New York 11201
(212) 855-8003

Of Counsel:
E. Judson Jennings
Jonathan A. Weiss
Legal Services for the
Elderly Poor
2095 Broadway, Rm. 304
595-1340

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO, Plaintiff,	:	
-against-	:	CIVIL ACTION
THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, et al., Defendants.	:	FILE NO. 73 C 663

RULE 9-G - STATEMENT OF MATERIAL FACTS AS TO WHICH THE DEFENDANTS CONTEND THERE IS NO GENUINE ISSUE TO BE TRIED.

1. The applicable Trust Agreement provides:

(a) That applicants for disability pension must submit to examination by the Fund's physicians; and

(b) That the Trustees shall be the sole judges of whether or not applicants are disabled and that their determination shall be final and conclusive; and

(c) That eligibility for disability pension is based upon permanent disability to engage in any occupation.

2. With respect to Lugo the Trustees complied with every material provision of the Trust Agreement.

3. Lugo submitted to the Fund two letters from his personal physician, in which letters his physician does not state that he is disabled either totally or partially, either permanently or temporarily, either from engaging in his most recent occupation or in any other occupation. Lugo's physician did not state that Lugo had any "eye trouble".

4. Lugo was examined carefully and at length by competent Fund physicians, who prepared and submitted complete records of their examinations, based upon which a medical report that Lugo was not disabled was submitted to the Fund.

5. Lugo left his employment voluntarily, and he rejected requests by his employer, his Union Shop Steward and his ~~weife~~ wife that he return to work.

6. Lugo ceased to pay union dues, despite being warned by the Union that he was delinquent in the payment of his union dues.

7. Lugo applied to his industry's Annuity Plan for the payment of the money credited to his equity account, and requested that payment be made to his address in ARecibo, Puerto Rico. These payments are payable when a participant leaves the industry, and they are being mailed to Lugo.

8. Lugo has not been found eligible for disability payments by the U.S. Social Security Administration.

9. The New York City Department of Social Services is giving Welfare payments to Lugo, without having inquired of Lugo's last employer or his Union as to whether Lugo is employ-

able. Lugo has stated that he chose to continue this arrangement, one reason being that if he returned to work his son's illness, now covered by Medicaid, would cost him $40.00 per week.

Dated: New York, New York
September 17, 1973.

Respectfully submitted,

HAROLD STERN

Attorney for Defendants

To:
Brooklyn Legal Services, Corporation B
Att: David S. Preminger, Esq.
152 Court Street
Brooklyn, New York 11201

Juan Sanchez LUGO, Plaintiff,

v.

The EMPLOYEES RETIREMENT FUND OF the ILLUMINATION PRODUCTS INDUSTRY et al., Defendants.

No. 73-C-663.

United States District Court, E. D. New York.

Oct. 12, 1973.

Employee brought suit for declaratory and injunctive relief against employees' retirement fund and the trustees thereof, alleging a violation of the Labor Management Relations Act in denying plaintiff's application for benefits under the fund, and also claiming damages. The District Court, Bartels, J., held that (1) where plaintiff alleged that the trust fund was not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, the court had jurisdiction to determine whether the trust agreement in fact satisfied the pertinent statutory standards, (2) the court, under the penumbra of express statutory mandate, also had jurisdiction over plaintiff's claim which was predicated on a lack of due process procedure by the trustees in determining eligibility of the participants, and (3) plaintiff's allegations set forth a violation of the Labor Management Relations Act and stated a cause of action.

Motion to dismiss complaint denied.

1. Labor Relations ⇐131

If trust agreement, in the first instance, complies with Labor Management Relations Act provision making it unlawful for an employer to make payments to a representative of employees, but with an exception for payments made to a trust fund complying with enumerated requirements, the district court would have no jurisdiction to dictate the terms of the agreement or to adjudicate a violation of the fiduciary obligation of the trustees in the administration of the trust. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

2. Labor Relations ⇐131

Where employee alleged that trust fund was not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, district court had jurisdiction to determine whether the trust agreement in fact satisfied the standards of Labor Management Relations Act exception to the general prohibition against an employer making payments to an employee representative, and the court also had specific authority to restrain any violations of that statutory provision. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

3. Labor Relations ⇐131

An employees' trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries has a structural defect in that it fails to satisfy the Labor Management Relations Act requirement that the fund shall be for the sole and exclusive benefit of all the employees. Labor Management Relations Act, 1947, §§ 302, 302(c)(5) as amended 29 U.S.C.A. §§ 186, 186(c)(5).

4. Labor Relations ⇐131

An employees' trust fund, coming within the Labor Management Relations Act exception to the general prohibition against an employer making payments to an employee representative, does not fit the categories of an ordinary trust and to that extent is sui generis and thus requires compliance with the objectives of the pertinent statutory provision. Labor Management Relations Act, 1947, § 302 as amended 29 U.S.C.A. § 186.

5. Labor Relations ⇐131

Under the penumbra of the express statutory mandate of the Labor Management Relations Act provision making it unlawful for an employer to make payments to an employee representative, but excepting payments made to an em-

A-15

strain violations of this section'. These violations, if we read correctly, are violations of basic structure, as determined by the Congress, not violations of fiduciary obligations or standards of prudence in the administration of the trust fund." 393 F.2d at 424.

A

This leaves open for determination the crucial issue as to whether, in fact, the trust agreement was for the sole and exclusive benefit of the employees. If the Court finds that the trust agreement is not so structured it, of course, possesses jurisdiction over the claim, but the Court can determine this question only if, in the first instance, it assumes jurisdiction. Wheeldin v. Wheeler, 373 U. S. 647, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963); Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773, 90 L.Ed. 939 (1946). A plaintiff who places in issue the exclusionary eligibility requirements of a trust fund places in issue the question whether the fund is a section 302 trust fund. Thus, the District of Columbia Court of Appeals held in 1968 in Roark v. Lewis, 130 U.S.App.D.C. [illegible], 401 F.2d 425, that the requirement ... a trust of employment by the employee by the last signatory coal operator to qualify for eligibility benefits was prima facie unreasonable and required the trustees to come forward with evidence establishing its reasonableness, saying, at p. 429:

> "We do say that when such employees are *denied* pensions by a requirement which would *give* pensions to employees having worked a substantially lesser period of time for contributing employers, the burden is on the trustees to show some rational nexus between the Fund's purpose and the requirement. If such a nexus is shown, the court's scrutiny is at an end. It is for the trustees, not judges, to choose between various reasonable alternatives."

In a similar case, Insley v. Joyce, *supra*, 330 F.Supp. at 1233, it was held:

> "A pension plan which excluded a sizeable number of union members, with no reasonable purposes behind their exclusion, may, in fact, fail to be for the sole and exclusive benefit of employees as Congress used that term in its exemption to the general prohibition against payment of moneys from employers to labor representatives."

[2] Plaintiff having alleged that the trust fund is not "for the sole and exclusive benefit of the employees" by reason of its exclusive eligibility requirements, the Court has jurisdiction to determine whether the trust agreement in fact satisfies the statutory standards of Section 302 and, in addition, under Section 302(e) has specific authority to restrain any violations of that section.

B

Jurisdiction over plaintiff's second claim, predicated upon a lack of due process procedures by the trustees in determining eligibility of the participants, raises a more doubtful question. It is not clear from a literal reading of the statute whether such action by the trustees involves the violation of a fiduciary obligation in the administration of the trust or the authority of the trustees granted in the agreement to administer the trust in a manner so lacking in fundamental fairness that its operation would not be "for the sole and exclusive benefit of the employees." Such conduct if authorized, would in substance be equivalent to a basic structural defect. Referring to such conduct, the Court of Appeals of the District of Columbia in Roark v. Lewis, *supra*, 401 F.2d at 426–427, concluded that the statute:

> "explicitly casts authority to create such a fund in trust terms, consequently the scope of court review of trustees' action has been defined as one of determining whether their action was arbitrary or capricious. If it was, then potential beneficiaries of the trust may justly complain that they were entitled to have a higher

A-18

standard of conduct exercised on their behalf."

At first blush, this statement seems to ignore the distinction between an express exclusionary provision in the trust agreement itself and arbitrary and exclusionary action of the trustees in interpreting or administering the trust. As a practical matter, however, if such conduct is authorized, it is difficult to differentiate between the two since the result in both cases is exclusion of employees from the benefits of the trust. In Sturgill v. Lewis, 125 U.S.App.D.C. 335, 372 F.2d 400 (1966), the Court of Appeals of the District of Columbia said:

> ". . . the proceedings before the Trustees should conform to at least elemental requirements of fairness, which requirements in these circumstances normally include, in addition to notice, a hearing at which the applicant is confronted by the evidence against him, an opportunity to present evidence in his own behalf, articulated findings and conclusions having a substantial basis in the evidence taken as a whole, and a reviewable record."

In Danti v. Lewis, 114 U.S.App.D.C. 105, 312 F.2d 345, 348 (1962), the same Court assumed jurisdiction to ascertain whether the action of the trustees of a welfare and retirement fund in denying the eligibility of a participant's application for retirement benefits, was supported by substantial evidence or was arbitrary and capricious.

[3-5] We are not certain whether the Second Circuit will interpret the jurisdiction of this Court under Section 302 as broadly as the District of Columbia Court of Appeals. We do believe, however, that a trust fund which authorizes the trustees to act arbitrarily and capriciously to exclude from eligibility certain potential employee-beneficiaries, has a structural defect in that it fails to satisfy the requirement that the fund shall be for the sole and exclusive benefit of all the employees. A Section 302 trust fund does not fit the categories of an ordinary trust and to that extent is *sui generis* and thus requires compliance with the objectives of Section 302. Roark v. Lewis, *supra*, 401 F.2d at 427. In assuming jurisdiction for the enforcement of such a trust in accordance with Section 302, we do not do so under any broad chancery powers of the Court (*cf.*, e. g., Cepra v. Suro, 235 F.2d 107 (1st Cir. 1956)), or under the theory that Section 302(e) is "the foundation stone for federal court management of trust funds." See Bowers v. Ulpiano Casal, Inc., 393 F.2d at 426. Rather, we believe that jurisdiction in a case of this kind can be found within the "penumbra of express statutory mandate" of Section 302. See Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 457, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957).

II

[6] Assuming jurisdiction, defendants next insist that the complaint should be dismissed pursuant to Rule 12(b)(6) for failure to state a claim upon which relief can be granted. The gravamen of the defendants' contention is that assuming plaintiff's allegations are true, they do not set forth a violation of Section 302. This argument is closely allied to the jurisdictional attack. In effect, defendants maintain that provisions in a trust fund which deny eligibility for retirement and disability benefits for allegedly arbitrary reasons to a substantial number of employees, do not set forth a cause of action. With this contention we cannot agree. The complaint raises serious questions of eligibility classifications and arbitrary conduct on the part of the trustees, which cannot be dismissed without evidence establishing a rational nexus or relationship between employee eligibility classifications and the trustees' conduct on one hand, and the objectives of Section 302 (c)(5) on the other hand.

If we are also to treat the defendants' application under Rule 12(b)(6) as a motion for summary judgment, it appears clear that it too must be denied because no evidence has been submitted

to the Court to indicate that plaintiff's allegations concerning eligibility requirements and absence of due process are without merit.

Defendants' motion is, therefore, in all respects denied. So ordered.

A-19

ployees' trust fund complying with certain requisites, the district court had jurisdiction of employee's challenge, predicated on a lack of due process procedure by the trustees, to the fund's eligibility requirements for a disability pension. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

6. Labor Relations ⇨131

Allegations that provisions in employees' trust fund denied eligibility for retirement and disability benefits for arbitrary reasons to a substantial number of employees, in violation of Labor Management Relations Act provision, stated a cause of action. Labor Management Relations Act, 1947, §§ 302, 302(c)(5), (e) as amended 29 U.S.C.A. §§ 186, 186(c)(5), (e).

John C. Gray, Jr., New York City, for plaintiff; Douglas J. Kramer, Brooklyn Legal Services Corp., Brooklyn, N. Y., and David S. Preminger, New York City, of counsel; E. Judson Jennings and Jonathan A. Weiss, Legal Services for the Elderly Poor, New York City, of counsel.

Harold Stern, New York City, for defendants; Norman Rothfeld, New York City, of counsel.

BARTELS, District Judge.

Plaintiff brings this action for declaratory and injunctive relief against The Employees Retirement Fund of the Illumination Products Industry (Retirement Fund) and the trustees thereof, alleging a violation by defendants of Section 302 of the Taft-Hartley Act, as amended, 29 U.S.C. § 186 (the Act) in denying plaintiff's application for benefits under the Retirement Fund, and also claiming damages. Jurisdiction is alleged under Section 302(c)(5) and (e) of the Act, as well as under 28 U.S.C. §§ 1331 and 1337.

Defendants move to dismiss the complaint under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure on the ground that the Court has no jurisdiction of the complaint under Section 302 of the Act, and also that plaintiff has failed to state a claim upon which relief can be granted.

By Section 302 of the Act, Congress intended to prohibit the corruption of union representatives and the extortion of tribute from employers and thus eliminate the influence of side payments. As a part of this statutory scheme the sole control by union officials of trust funds under Section 302(c)(5) was proscribed. Section 302(c)(5) authorized payments to trust funds established "for the sole and exclusive benefit of the employees of such employer . . ." and administered by representatives of employers and employees and neutral persons provided that the trust is for retirement pensions and other benefits for employees including disability insurance. In addition, the detailed basis for payments and operation of the trust was required to be set forth in an agreement between the parties. Paragraph (e) of Section 302 of the Act expressly grants jurisdiction to the district courts[1] to restrain violations of this section. There is no question that the Retirement Fund in this case and its trustees are subject to the provisions of Section 302.

The Retirement Fund provides for two kinds of benefits relevant to plaintiff's position: (1) standard retirement benefits for those who have remained employed or have been available for employment by contributing employers, attain the age of 60 and have 90 months employment in the ten-year period immediately preceding the filing of a participant's application; and (2) disability pension for those who have been employed or available for employment by contributing employers for at least ten years and have an aggregate of 90

1. Section 302(e) of the Act reads in part: "The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of section 381 of Title 28 (relating to notice to opposite party) to restrain violations of this section, ..."

A-16

months employment for the ten years immediately preceding the filing of a participant's application and who are also permanently disabled to the extent that they can no longer obtain gainful employment in any occupation.

Plaintiff, age 50, a participant in the Fund since 1955 with 195 months of credited employment and a victim of diabetes, applied for benefits under the disability provision of the Retirement Fund on the ground that he was totally disabled and unable to engage in gainful employment or, in the alternative, for retirement benefits under the standard retirement fund. His application for relief was denied by the trustees as failing to satisfy the eligibility requirements of either of the foregoing provisions.

He attacks the standard retirement provision of the plan claiming it is arbitrary and unreasonable because it (i) excludes him and all others similarly situated who have not reached the age of 60 but who have worked in the industry more than 90 months, while it includes those who had reached the age of 60 and have worked in the industry only 90 months; and (ii) requires employment or availability for employment by contributing employers for 90 months preceding the filing of the application and thus deprives him and others similarly situated who have worked in the industry but who have not been employed for 90 months in the ten-year period immediately preceding the filing of the application, of any credit for prior employment in the industry outside the ten-year period. At the same time plaintiff challenges the eligibility provision of the disability pension on the ground that (i) the requirement that the participant be so permanently disabled that he can no longer secure gainful employment in any industry is arbitrary and unreasonable; and (ii) the procedures established for the determination of disability of the participants so lacked the fundamental requirements of due process, such as a hearing and an opportunity to present medical evidence, as to render them arbitrary and capricious.

I

[1] We are compelled initially to turn to the question of jurisdiction which, in fact, has been the subject of attack in prior similar cases. See, e. g., Insley v. Joyce, 330 F.Supp. 1228 (N.D. Ill.1971). Defendants claim that under the provisions of Section 302(c)(5), requiring the trust fund to be established "for the sole and exclusive benefit of the employees of such employer, and their families and dependents," this Court's jurisdiction is limited to the issue of whether there has been a violation of the basic structure of the trust agreement.[2] They insist that this Court has no jurisdiction to dictate the terms of the trust agreement or to adjudicate a violation of the fiduciary obligation of the trustees in the administration of the trust. With this general statement there can be no disagreement provided the trust agreement, in the first instance, complies with Section 302. Bowers v. Ulpiano Casal, Inc., 393 F.2d 421 (7th Cir. 1968); Insley v. Joyce, *supra*; Giordani v. Hoffmann, 295 F.Supp. 463 (E.D.Pa.1969); Porter v. Teamsters, etc. Funds, 321 F. Supp. 101 (E.D.Pa.1970). The Court in *Bowers, supra*, expressed what this Court believes to be the proper jurisdictional foundation of Section 302. There the Court said:

"We are, however, persuaded that the weight of reason and authority compels a narrow reading of section 302(e). In the first place, its language limits federal courts 'to re-

2. The legislative history of Section 302 throws little light upon the scope of Congressional intent in enacting the section except to make it clear that the objective was to remove the corruptive influence of side payments and to proscribe control of the trust funds by union officials. See Weir v. Chicago Plastering Institute, Inc., 177 F. Supp. 688, 696 (N.D.Ill.1959), reversed, 279 F.2d 92 (7th Cir. 1960); Bowers v. Ulpiano Casal, Inc., 393 F.2d 421, 425 (1st Cir. 1968); Insley v. Joyce, 330 F.Supp. 1228, 1233 (N.D.Ill.1971).

A-17

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO, Plaintiff, -against- THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS, SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL II, EDWARD R. MURPHY, JERRY SCHNEIT, ROWLAND J. SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO, STEPHEN KANYOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry, Defendants.	CIVIL ACTION NO. 73 C 663 ANSWER

Defendants, by their attorney Harold Stern, for their answer to the complaint, allege:

1. Admit the allegations contained in paragraphs designated and numbered 5, 6, 7, 8, 9, 11, 12, 13 and 15 of the complaint.

2. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph designated and numbered 1 of the complaint.

3. Deny the allegations contained in paragraphs designated and numbered 2, 3, 4, 10, 14, 16, 17, 18, 19, 20, 21 and 22 of the complaint.

WHEREFORE, the defendants demand that the complaint be dismissed, with costs.

HAROLD STERN
Attorney for Defendants
Office and P.O. Address
No. 70 Pine Street
New York, New York 10005

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

JUAN SANCHEZ LUGO,

Plaintiff,

- against -

INDEX NO.
73-C-663

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, et al,

Defendants.

----------x

COUNTER STATEMENT PURSUANT TO LOCAL RULE 9(g)

1. Defendants resubmit their Rule 9(g) Statement dated September 17, 1973 in support of the instant Cross Motion for Summary Judgment. The only statement therein which was denied in Plaintiff's Counter Statement dated September 21, 1973, is the statement in Item 5 that Lugo "rejected requests by his employer, his union shop steward and his wife that he return to work".

2. Analysis of the aforesaid Statement and Counter Statement is contained in Defendants' Brief at Pages

3. Defendants do not dispute the allegations contained in Paragraphs 1, 2 and 3 of Plaintiff's Statement of May 3, 1974.

4. With respect to Paragraph 4, Defendants do not know whether Lugo has performed any work since 1972 or has worked in Puerto Rico, having had no opportunity to examine him before trial.

5. With respect to Paragraph 5, Defendants do not know whether Lugo now is a recipient of welfare benefits in the Aid to the Disabled Category, having had no opportunity to examine him before trial.

6. Defendants do not dispute the allegations contained in Paragraphs 6, 7, 8 and 9 of Plaintiff's Statement of May 3, 1974.

7. With respect to Paragraph 10, the Retirement Committee elicits and considers all material submitted by the applicants' own doctors in support of applications for disability pensions as well as the report of the Fund's own physicians.

8. Defendants do not dispute the allegations contained in Paragraphs 11, 12 and 13 of Plaintiff's Statement of May 3, 1974.

9. The statements in Paragraph 14 are irrelevant herein and are incorrect in that Actuarial Consultants Martin E. Segal Company

(a) assumed a 4-1/2% interest rate, not 3-1/2%

(b) attributed its prior overestimation of the actual cost per an active employee of running the plan in large part to "the continuing trend toward earlier retirement" and

(c) stated that the fund income per capita of

$183. was a future anticipation, and not "actually contributed by the employers".

10. Paragraph 15 is irrelevant, particularly since the pension plan herein is not one of the "100 largest pension plans", but is comparatively small, and in any event, the characteristics of any other plans do not bind the Defendant Trustees.

Dated: May 22, 1974

MENAGH, TRAINOR & ROTHFELD
Attorneys for Defendants
Office & P. O. Address
130 East 40th Street
New York, New York 10016

medical report that Lugo was not disabled was submitted to the Fund.

Plaintiff denies Defendants' allegations that:

10. Lugo rejected requests by his employer, his union shop steward and his wife that he return to work.

Plaintiff's attack upon the Pension Plan

11. Plaintiff claims, and Defendants deny, that the requirement that applicants for a standard (non-disability) pension be actively employed or available for employment up to age 60 is unfairly discriminatory. The Illumination Products Industry needs this service requirement in order to induce experienced employees to remain in the Industry. When money is available, the Pension Plan has a legal right to decide to increase monthly pension payments rather than to provide for vesting as Plaintiff evidently would prefer. Thus, as a result of the 1970 actuarial report to which the Plaintiff refers, the monthly pension benefit was increased in September 1971 from $75. to $100. In any event, this Court has no jurisdiction of this issue, as argued heretofore.

ARGUMENT

Plaintiff's Claim In POINT I That The Fund's Eligibility Rule Is Unlawful is Invalid.

POINT I of Plaintiff's Brief asks this Court for a ruling which would declare many thousands of pension plans, all approved by the Internal Revenue Service under

and between the MANUFACTURERS OF ILLUMINATION PRODUCTS, INC., an Employers' Association composed of Employers employing employees represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, hereinafter referred to as the "Illumination Association", the NEW YORK LAMP AND SHADE MANUFACTURERS ASSOCIATION composed of Employers employing employees represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, hereinafter referred to as the "Portable Lamp Shade Association", both Associations hereinafter also referred to as "Employer", and LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO, hereinafter referred to as the "Union".

W I T N E S S E T H

WHEREAS, the Union and the Employer entered into collective bargaining agreements governing the relationship of the parties; and

WHEREAS, the Pension, Hospitalization and Benefit Plan of the Portable Lamp and Shade industry was heretofore merged into the Pension, Hospitalization and Benefit Plan of the Illumination Products Industry;

NOW, THEREFORE, the parties hereto agree as follows:

1. The Employees Retirement Fund of the Illumination Products Industry, (hereinafter called the "Fund") and the benefits set forth shall be administered by the Joint Retirement Committee, (hereinafter called the "Committee").

2. a. The Committee shall consist of ten (10) Employer representatives to be designated in the manner as provided by the By-Laws or appropriate resolutions of the Employer, and ten (10) Union representatives to be appointed by the Union. Any vacancy in the Employer members of the Committee, however occurring, shall be

filled in the manner provided by the By-Laws or other appropriate resolution of the Employer, and any vacancy in the Union members of the Committee, however, occurring, shall be filled by the Union.

b. The Committee shall select from among its members a Chairman, a Vice-Chairman, a Treasurer and a Secretary. Two of the foregoing offices shall at all times be occupied by Employer and two by Union members of the Committee, and all action of whatever kind of the officers must be taken jointly by two of those officers, of whom one shall be an Employer and the other a Union member of the Committee.

3. The Committee may adopt rules and regulations for the administration of the Fund and the conduct of its affairs which are not inconsistent with any of the provisions of this Agreement.

4. Any act which this Agreement authorizes or requires the Committee to do may be done by twelve (12) members of the Committee at any time acting hereunder, and the action of twelve such members, as recorded from time to time by vote at a meeting shall constitute effective action for all purposes of the Committee. In the absence of the full Committee membership of either Employees or Employers those members of such group shall have power to and are hereby authorized to cast the vote for those absent so that at all time each group shall have ten votes.

5. The determination in good faith by the Committee of any matter or question under this Agreement shall be final and conclusive.

6. The members of the Committee shall serve without compensation, but all reasonable expenses incurred by the Committee, including clerical and other assistance, shall be borne by the Fund.

7. No member of the Committee shall be liable for anything done or omitted to be done hereunder so long as he was acting in good faith and was free from fraud.

of the administration of the Fund, which records shall be open to inspection at all reasonable hours by any contributing Employer or by the duly authorized officials of the Union or by the duly authorized representatives of any such Employer or authorized Union official. Annual audits shall be made by Certified Public Accountants, employed by the Committee, and a statement of the results of such audits shall be available for inspection by the Employers, the Union and the Employees at the principal office of the Committee.

9. In the event of a deadlock resulting from the failure of the Employer and Employee representatives of the Committee to agree on a matter relating to the administration of the Fund, then, and in that event, the Committee shall appoint an impartial umpire to decide such dispute and upon the failure of the Committee to agree within a reasonable length of time upon the selection of an impartial umpire, either the Employer or Employee representatives of the Committee may petition the United States District Court for the Eastern District of New York for the appointment of such impartial umpire.

10. The Committee shall appoint an Executive Secretary. The Executive Secretary shall manage and operate the business office attend all meetings of the Committee, keep minutes of the proceedings and carry on the correspondence. He shall conduct all business assigned to him by the Committee or by the Chairman. He shall, with the sanction of the Committee, or with the approval of the Chairman between meetings, be permitted to employ whatever help may be required for the proper administration of the Fund.

11. The moneys constituting the Fund shall be raised in a manner and amount as provided for as follows:

a. As of the first payroll week after July 1, 1956,

each Employer, whether a member of the Employer or non-member who has become a party hereto, shall contribute an amount equal to five (5%) percent of the weekly wages of each employee within the bargaining unit of the collective bargaining agreements between the Employers and the Union.

b. The contributions referred to in "11 (a)" shall be paid over weekly to the "Fund". Reports shall be filed as required by the Committee.

c. The Employer shall at no time be required to contribute to the "Fund" any sum in excess of an amount equal to five (5%) percent of the total weekly wages as prescribed above, unless mutually agreed to between the Employer and the Union.

12. All moneys received by the Committee shall be administered as Trust Funds for the benefits of those entitled to benefits hereunder. The Committee is empowered to invest and reinvest all funds of the Trusts created hereunder in such government securities, building loans, housing mortgages and other securities as they may select in their sole discretion, and to purchase, lease for any term of years, lend/sell, exchange, convey or dispose of any property, whether real or personal, or any interests therein, all of which shall be at such prices and upon such terms and conditions as said Committee may deem advisable to carry out the purposes of the Funds, whether or not any of the foregoing are authorized by law for the investment of Trust Funds generally; to borrow moneys in such amounts and upon such terms and conditions as shall be deemed advisable by the Committee to carry out the purposes of the Funds and to pledge any securities, and to mortgage any property, real or personal, or any interests therein for the payment of any such loans; and to do all acts, whether or not expressly authorized herein, which the Committee may deem necessary or proper to effectuate the foregoing and for the protection of the property held hereunder.

13. Fifty-three (53%) percent of all moneys collected from the Employers as hereinabove provided, shall be deposited in a separate Fund to be known as the "Pension Trust Fund", which fund shall be used exclusively for the payment of Standard and Disability Pension Benefits, as herein provided. The remaining forty-seven (47%) percent of all such moneys collected shall be deposited in a separate fund to be used for the payment of other benefits under this Fund. The Employer and the Union agree from time to time to increase or decrease the percentage payment of the Pension Trust Fund, as herein provided, such increase or decrease to be dependent upon the sufficiency of the Pension Trust Fund to meet all obligations thereunder, including the setting up of adequate reserves. In no event, however, shall the funds deposited in the Pension Trust Fund for the payment of Pension or Disability Pension Benefits be used for any other purpose other than the payment of Pension or Disability Pension Benefits, as hereinafter provided.

14. The irreducible minimum of the Pension Fund is hereby fixed at Two Hundred Fifty Thousand ($250,000.00) Dollars and, notwithstanding any applications previously presented, no payments to any employees shall be made should the effect of the aggregate amount of such payments then due result in reducing the Pension Fund below said irreducible minimum of Two Hundred Fifty Thousand ($250,000.00) Dollars. The Union agrees that it will, and as often as may be necessary, contribute such amount or amounts to the Pension Fund, which, together with the amount in excess of Two Hundred Fifty Thousand ($250,000.00) Dollars then on hand, will enable the Committee to meet the then current payment due to employees, without reducing the Pension Fund below Two Hundred Fifty Thousand ($250,000.00) Dollars.

15. Any moneys contributed to the Fund by any Employer, by any Employee, or by the Union, shall, thereupon, belong to the

Fund to be administered pursuant to the terms hereof, and no contributing Employer, Employee, or the Union shall have any right, title or interest in any sum so contributed. No Employee shall have any right or claim, legal or equitable hereunder, unless and until the Committee has approved his or her application, in which case the rights shall be limited to those awarded by the Committee, and shall be enforceable not by the individual Employee affected, but by the Union.

16. Failure on the part of any individual Employer to adhere to the provisions of this Agreement shall constitute a violation of the collective labor Agreement so far as such defaulting Employer is concerned, but neither the Employer nor its other members, nor any other Employer not a member who has become a party hereto, shall be financially responsible for such default, and no stoppage, strike or withdrawal of other benefits under the collective bargaining Agreement on account of such default shall affect Employers who are not in default.

17. The Union agrees that on and after this date, it will not enter into any collective bargaining agreement with any Employer, unless one of the conditions of said Agreement is an undertaking by such Employer to become a party to this Agreement by signing a counterpart hereof.

18. There shall be ten (10) types of benefits, which shall be known as:

1. THE STANDARD PENSION BENEFIT
2. THE DISABILITY PENSION BENEFIT
3. THE HOSPITALIZATION AND/OR SURGICAL BENEFIT
4. THE DEATH PREMIUM BENEFIT
5. THE DUES PAYMENT BENEFIT
6. THE DENTAL BENEFIT
7. THE DIAGNOSTIC MEDICAL BENEFIT
8. THE OPTICAL BENEFIT
9. THE REST HOME BENEFIT
10. THE SERIOUS INJURY BENEFIT

1. THE STANDARD PENSION BENEFIT shall be made avail-

able to:

(a) Any Employee, male or female, who has attained the age of sixty (60) years, and (1) who prior to July 1, 1959 was employed or available for employment by one or more contributing Employers and (2) who at the time of filing his or her application for a Standard Pension has been continuously employed in the industry and meets the eligibility requirements that were in effect at the time he or she became a participant of the Fund.

(b) Any Employee, male or female, who has attained the age of sixty (60) years, is employed by an Employer and who has at the time of filing his or her application for benefits hereunder been employed for at least eleven (11) years in the industry immediately preceding the date of application and who during said minimum of eleven (11) years has been employed in the industry for not less than an aggregate of one hundred and ten (110) months during said period by one or more contributing Employers, shall be eligible to receive Pension benefits under this Agreement. Beginning with July 1, 1959, the above eligibility requirements shall be, annually, increased as follows:

For the period beginning July 1, 1960, applicants to be eligible for Pension benefits shall be required to have been employed in the industry for a minimum of twelve (12) years with a minimum aggregate employment by contributing Employers during such period of one hundred and twenty (120) months; with a similar annual increase of employment in the industry of one (1) year thereafter; and a similar annual increase of employment of ten (10) months for each year thereafter. Such increase in eligibility years of employment and total employment shall continue until an applicant has been employed in the industry for fifteen (15) years, with a minimum aggregate of employment by contributing Employers during said period of one hundred and fifty (150) months.

be eligible for Pension benefits shall be required to have been employed in the industry for a minimum of twenty (20) years with a minimum aggregate employment by a contributing Employer during such period of two hundred (200) months.

(c) Any Employee who by reason of an emergency confronting our Country, terminates his employment to enter the Armed Forces shall be credited for the period of time he or she is in Service. In order to obtain such credit, the Employee must apply for reemployment with his former Employer, or in the industry, within the period specified by the Federal Statutes governing such cases.

(d) The Standard Pension Benefit to an Employee, whose Standard Pension application has been approved by the Committee, shall be as follows:

The sum of Fifty Dollars ($50.00) per month for those retired Employees whose application for the standard pension benefits were approved by the Committee on or before June 30, 1966.

For those retired Employees whose applications for standard pension benefits were approved by the Committee on or after July 1, 1966, the sum of Fifty Dollars ($50.00) per month for the period July 1, 1966 to June 30, 1967; and beginning on July 1, 1967, those Employees shall receive an increase in benefits bringing the total sum to Seventy-five Dollars ($75.00) per month.

The sum of Seventy-five Dollars ($75.00) per month for those retired Employees whose application for the standard pension benefits were approved by the Committee on and after July 1, 1967.

(e) No application for approval will be accepted by the Committee, dated more than fifty (50) days prior to the date of retirement. Payments will start (if the application is approved by the Committee) the first day of the month following the date of application or date of termination of employment, whichever comes last

(f) Should any pensioned Employee engage in the industry, or do any work in any capacity whatsoever in any other industry, all payments to him or her hereunder shall forthwith be discontinued.

2. THE DISABILITY PENSION BENEFIT shall be made available to:

(a) Any Employee, male or female, and who prior to July 1, 1959 was employed or available for employment by one or more contributing Employers, and (1) who at the time of filing his or her application for a Disability Pension has been continuously employed in the industry and meets the eligibility requirements that were in effect at the time he or she became a participant of the Fund.

(b) Any Employee, male or female, who is employed or was available for employment by a contributing Employer and who had at the date of the filing of his or her application for Disability benefits hereunder been employed or available for employment for at least eleven (11) years by any one or more of the contributing Employers and who immediately preceding the date of application has been employed by one or more contributing Employers for not less than a period of one hundred and ten (110) months during said period, and who is not eligible for the Standard Pension Benefit and who is permanently incapacitated or who is disabled to such an extent that he or she can no longer secure gainful employment in the industry, or any other line of business (the Committee to be the sole judge of the facts) shall be eligible to receive Disability Pension Benefits under this Agreement.

Beginning with July 1, 1959, the above eligibility requirements shall be, annually, increased as follows:

For the period beginning July 1, 1960, applicants to be eligible for Disability Pension Benefits shall be required to have

been employed in the industry for a minimum of twelve (12) years with a minimum aggregate employment by contributing Employers during such period of one hundred and twenty (120) months; with a similar annual increase of employment in the industry of one (1) year thereafter; and a similar annual increase of employment of ten (10) months for each year thereafter. Such increase in eligibility years of employment and total employment shall continue until an applicant has been employed in the industry for fifteen (15) years, with a minimum aggregate of employment by contributing Employers during said period one one hundred and fifty (150) months.

For the period beginning July 1, 1967, applicants to be eligible for Disability Pension Benefits shall be required to have been employed in the industry for a minimum of twenty (20) years with a minimum aggregate employment by a contributing Employer during such period of two hundred (200) months.

(c) The Disability Pension Benefit to an Employee, whose disability pension application has been approved by the Committee, shall be as follows:

The sum of Fifty Dollars ($50.00) per month for those Employees whose applications for disability pension benefits were approved by the Committee on or before June 30, 1966.

For those Employees whose applications for the disability pension benefits were approved by the Committee on or after July 1, 1966, the sum of Fifty Dollars ($50.00) per month for the period July 1, 1966 to June 30, 1967; and beginning on July 1, 1967, those Employees will receive an increase in benefits bringing the total sum to Seventy-five Dollars ($75.00) per month.

The sum of Seventy-five Dollars ($75.00) per month for those Employees whose applications for disability pension benefits were approved by the Committee on and after July 1, 1967.

The above payments will continue during the existence of such disability.

3. THE HOSPITALIZATION AND/OR SURGICAL BENEFIT shall be made available to:

(a) Beginning with July 1, 1960, any Employee, male or female, not receiving Standard or Disability Pension Benefits, for whom one or more contributing Employers have paid at least six (6) months contributions within twelve (12) months preceding the date of such Employee's, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, admittence to a hospital, shall be eligible for hospitalization and/or surgical benefits covering such Employee, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, provided they have been duly recorded with the Committee.

Beginning July 1, 1960, in the event that an eligible Employee dies while the Spouse of such Employee or their children as described in the paragraph above are in a hospital for medical and/or surgical treatment then the entire amount of benefits payable shall be paid to the survivor or survivors as provided for herein under Section 29 entitled "Payments to Survivors".

(b) Married children of a participating Employee, regardless of age, shall not be eligible for hospitalization, maternity, and/or surgical benefits.

(c) Female Employees who become participants of the plan on and after July 1, 1960, for whom one or more contributing Employers have paid at least ten (10) months contributions shall be eligible for Maternity Benefits.

(d) Male Employees who become participants of the plan on and after July 1, 1960, for whom one or more contributing Employers have paid contributions for at least ten (10) months

shall be eligible for Maternity Benefits for their wives.

(e) Beginning July 1, 1969, Employees of newly organized companies for whom Employers have paid contributions to this Fund for a period of at least four (4) weeks after such companies have been organized shall be entitled to hospitalization and/or surgical benefits for themselves, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, provided that they have been duly recorded with the Committee.

(f) All Hospitalization, Surgical and Maternity applications must be filed within thirty (30) days of admittance to a hospital and no later than six (6) months after date of discharge from a hospital.

(g) The Hospitalization Benefit, beginning with January 1, 1969, paid to an Employee, for such Employee, his or her spouse or children, whose application has been approved by the Committee, shall be Twenty-eight Dollars ($28.00) per day for the first sixty (60) days, and Fourteen Dollars ($14.00) per day thereafter, not to exceed a total of one hundred and twenty (120) days, for a maximum payment of Two Thousand Five Hundred and Twenty Dollars ($2,520.00) in any fiscal year, payable from the first day of the period during which such applicant is confined to a hospital.

In case of chronic illness of an Employee, such employee shall be entitled to receive each year the maximum payments herein for the period that such Employee is confined to a hospital.

In case of chronic illness of a spouse and/or children of an Employee, such spouse and/or children shall be entitled to receive the maximum payments provided for herein limited to a period of only two (2) years fiscal payments for a single chronic illness and only for such period that such spouse and/or children are confined to a hospital.

(h) The Surgical Benefit, beginning with July 1, 1958, shall be paid to an eligible Employee, for such Employee, his or her spouse or unmarried children between the ages of six (6) months and eighteen (18) years, in such amounts as are set forth in the Schedule of Allowances (pages 24 to 29, Booklet "Employees Retirement Fund of the Illumination Products Industry"). Surgical Benefits not listed on above pages will be paid in accordance with the Schedule of Allowances listed in the United Medical Service Blue Shield Booklet dated October 1956 under the provisions of the 2500/4000 service contract, except that the maximum allowance for a single surgery in any cases shall not exceed the sum of Two Hundred and Fifty ($250.00) Dollars.

Beginning July 1, 1967 and thereafter, in the event that an Employee, his or her spouse or children, whose application has been approved by the Committee, undergoes two or more surgical procedures, in different operative fields and through different operative incisions, in a single hospital stay, then surgical benefit payments shall be made as provided above covering the highest surgical procedure, and in addition fifty percent (50%) of the second surgical procedure.

(i) In the event that a husband, wife and/or children are participants of the Fund and a claim for hospitalization or surgical benefits is made by either the husband, wife or children as participants, hospitalization or surgical benefits shall be paid to only such participant as provided above and no hospitalization or surgical benefits shall be paid to the other participants.

(j) No payment for any claim or benefits incurred after the termination of employment shall be made to any Employee, regardless of his or her eligibility for such payments, who voluntarily leaves the employ of a contributing Employer and takes a

position outside of the industry. Employees who have been laid off due to lack of work in the shop of a contributing Employer shall be eligible for benefits for a period of six (6) months following such lay off, provided they are available for employment and are registered with the Employment Department of the Joint Industry Board of the Illumination Products Industry.

4. THE DEATH PREMIUM BENEFIT shall be made available to:

(a) Any Employee, male or female, employed or available for employment by a contributing Employer and (1) who has a three thousand dollar ($3,000.00) graduating certificate issued by the Electrical Workers Benefit Society or (2) who has a two thousand dollar ($2,000.00) graduating certificate issued by the Electrical Workers Benefit Society and a one thousand dollar ($1,000.00) graduating certificate issued by the Electrical Workers Benefit Association, Washington, D. C.

(b) The Death Premium Benefit shall consist of (1) a total payment of two dollars and twenty-five cents ($2.25) per month for each Employee, male or female, who is employed by a contributing Employer, and who holds only a three thousand ($3,000.00) dollar graduating certificate from the Electrical Workers Benefit Society or (2) a total payment of $2,70 per month for each Employee, male or female, who is employed by a contributing Employer, and who holds certificates from both the Electrical Workers Benefit Society and the Electrical Workers Benefit Association, Washington, D. C. This $2.70 monthly payments shall be allocated by applying $1.50 per month toward the premium payment of the $2,000.00 graduating certificate of the Electrical Workers Benefit Society and $1.20 per month toward the premium payment of the $1,000.00 graduating certificate of the Electrical Workers Benefit Association, Washington, D. C.

5. THE DUES PAYMENT BENEFIT shall be made available to:

Any Employee who receives Standard or Disability Pension Benefits, under which the Fund will pay the dues of such Employee to Local Union No. 3, International Brotherhood of Electrical Workers membership fees, Over-age Fund, Electrical Workers Benefit Society, in such amounts due on such Employee's behalf.

6. THE DENTAL BENEFIT shall be made available to:

(a) Any Employee, male or female, who at the time of applying for Dental care is employed (or available for employment) by a contributing Employer during the preceding twelve (12) months.

(b) The Dental Benefit shall be given at the Dental Department of the Medical and Dental Plan of the Electrical Manufacturing and Supply Industry located on the 7th floor of 130 East 25th Street, New York, N. Y., and shall consist of (1) Dental treatments of X-ray, cleaning of teath, extraction and fillings, and (2) Dentures, Bridges, Crowns, etc. will be provided at the actual cost of the material.

7. THE DIAGNOSTIC MEDICAL BENEFIT shall be made available to:

(a) Any Employee, male or female (1) employed by a contributing Employer and (2) for whom one or more Employers have paid at least six (6) months of contributions.

(b) The Diagnostic Medical Benefit, consisting of a comprehensive physical examination, shall be given at the Medical Department of the Medical and Dental Plan of the Electrical Manufacturing and Supply Industries, located on the 6th floor of 130 East 25th Street, New York, N. Y. This benefit is only diagnostic and no treatment is proposed or included.

8. THE OPTICAL BENEFIT:

(a) This benefit shall be granted effective January 1959, to any Employee, male or female, who is employed by a con-

tributing Employer, and for whom one or more Employers have paid at least six (6) months contributions immediately prior to application.

The Optical Benefit shall consist of one medical eye examination per fiscal year and if glasses are prescribed, one pair of standard glasses per fiscal year through the facilities provided by the Committee. For other than Standard glasses such as bifocals, case hardened lenses, special lenses or frames, etc., the additional cost shall be borne by the Employee.

9. THE REST HOME BENEFIT shall be made available to:

(a) Any Employee, male or female, (1) who has been employed or available for employment with a contributing Employer for at least five (5) years immediately preceding date of application; and (2) during the five (5) years immediately preceding the date of such application been employed by a contributing Employer for not less than fifty (50) months. In cases of hardship or extraordinary circumstances, the Committee may (in its sole discretion) waive the above limitations. In no case, however, shall anyone be admitted to the Rest Home who has not been employed or available for employment with a contributing Employer for at least two (2) years immediately preceding the date of application and employed at least twenty (20) months during these two (2) years immediately preceding date of application.

(b) When an eligible Employee requires convalescence after an illness in order to recuperate and the Committee in its judgment determines that such convalescence is necessary to rehabilitate such Employee, such Employee shall be admitted to the Bayberry Rest Home without payment. Should more than two (2) weeks' convalescence stay at the Rest Home be required, the Committee must approve the extended period.

10. THE SERIOUS INJURY BENEFIT shall be made available to:

(a) All employees who are injured while working for a contributing Employer of this Fund.

(b) When an Employee is seriously injured while employed in the plant or on an assignment at the direction of a contributing Employer and directly enters a hospital for that injury, he or she shall receive a full day's wages for each day of hospital confinement for a period not to exceed ten (10) weeks. The wages paid shall be based on and are not to exceed the Employee's standard work week as defined in the Employer's collective bargaining agreement with the Union.

19. Eligibility of Business Representatives of Local 3, International Brotherhood of Electrical Workers: Those Business Representatives, who are employed by the Union, servicing factories of contributing Employers of this Fund shall be eligible to be participants of this Fund and receive the benefits provided thereunder, provided a five (5%) percent contribution on their salary is paid by Local #3 in the same manner as that of any contributing Employer.

20. Application Forms:

(a) The Committee shall adopt application forms and every applicant shall be required to answer accurately and completely all questions on such forms. The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, the Employer or the Employers.

(b) The Standard Pension application shall contain a clause to the effect that the applicant desires to retire from all work and shall bind the applicant to discontinue work prior to the

first day of the month of his or her first benefit payment hereunder.

(c) The Disability Pension application shall contain a clause stating that the Committee has the power to prescribe a medical and/or physical examination (the cost to be borne by the Fund), and that the applicant will agree to such an examination before his application will be considered by the Committee.

(d) The applicant for Hospitalization and/or Surgical Benefits shall be required to furnish a certificate from a hospital showing the dates of admission and discharge therefrom and/or a certificate from a doctor showing the surgical procedure and date performed. In the case of a spouse, the applicant must also furnish a marriage certificate. In the case of children, the applicant must also furnish a birth certificate.

21. Union and Employers Supply Data: The Union and the Employers for themselves, their officers and respective committees and members, shall supply all available data to the Committee concerning employment conditions in the industry and, among other things, the age, health and employment record of Employees about to become eligible, and those who are eligible to apply for benefits hereunder.

22. Non-Eligibility Because of Past Condition: No Employee, male or female, his or her spouse, his or her children from six (6) months of age up to their eighteenth (18th) birthday, who would otherwise be eligible to either Disability Pension Benefits, Hospitalization Benefits or Surgical Benefits as provided for, respectively, in Section 18 hereof, shall be eligible to any such benefits where the disability, illness or surgery performed is the result of any condition which existed prior to the time that the person or those claiming through such person, became eligible.

23. Deferred Benefit Payments Because of Mental Illness: No benefits provided for under this Fund shall be payable to or for the account of any Employee, for the period of time that such Employee, his or her spouse or children, for whom benefits are sought, is confined to a mental institution. However, commencing with July 1, 1967 and thereafter, if and when an Employee, his or her spouse or children, who have been confined to a mental institution, is released, the Committee may in its discretion pay hospitalization benefits covering an Employee, not to exceed a total of two hundred forty (240) days in two (2) successive fiscal years, after which an Employee must again work for a contributing Employer to re-establish his eligibility; and if and when an Employee's spouse or children who have been confined in a mental institution are released, the Committee may in its discretion pay hospitalization benefits covering such spouse or children, not to exceed one hundred twenty (120) days in any fiscal year with a maximum total benefit not to exceed two hundred forty (240) days.

24. Non-Assignment or Non-Encumbrance of Benefits: To the end of making it possible for Participants or Pensioners covered by this Fund, improvidently to imperil the provisions made for their welfare and support, by directly or indirectly anticipating, pledging or disposing of their benefit payments hereunder, it is hereby expressly stipulated that no Participant or Pensioner hereunder shall have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any benefit payments, and that such payments shall not in any way be subject to any legal process to levy execution upon or attachment proceedings against the same for the payment of any claim against a Participant or Pensioner. Nor shall such payment be subject to the jurisdiction of any Bankruptcy Court or Insolvency proceedings by operation of law, or otherwise, and any such assignments, etc., shall be void and of no effect whatsoever.

25. Endorsed Checks: All checks must be endorsed personally by the Employee and correspond with the signature on the application for Pension, Hospitalization, Surgical, Serious Injury or Disability. If the payee becomes incapacitated and cannot endorse the checks to correspond with his or her original signature, a letter of explanation should be made to the Committee. In any case of signature discrepancies, the Committee shall have the right to withhold sending further checks until it has an opportunity to investigate and ascertain that no wrongful deed has been committed.

26. Hardship Cases: The Committee is also empowered to grant welfare benefits hereunder only in exceptional cases and to avoid hardship to Employees who may not be completely eligible within the requirements hereinbefore imposed. This power shall be exercised in a uniform and non-discriminatory manner.

27. Rescission of Benefits: The Committee may for grounds deemed adequate by it rescind its approval of any application, either before or after benefit payments have been made, and immediately upon such rescission all benefit payments to the Employee affected shall be discontinued and such Employee shall have no right or claim of any kind hereunder against the Committee, the Union, the Employer or the Employers. This power shall be exercised in a uniform and non-discriminatory manner.

28. Payments Terminate on Death: As long as this Agreement is in effect, all benefits provided therein shall be paid in accordance with its provisions to Employees whose applications have been approved by the Committee, but all payments shall automatically terminate on the death of an Employee, except as otherwise provided for in the Fund.

29. Payment to Survivors: All benefits accrued during

the life of an Employee but actually due and payable after such Employee's death shall be paid to the following persons, if then living, in the following order of priority:

(a) To surviving spouse;
(b) Children of the Employee;
(c) Father of the Employee;
(d) Mother of the Employee;
(e) Brothers and Sisters of the Employee;
(f) Personal representative of the Employee's Estate

Where, under this section, benefits become payable to a person under twenty-one (21) years of age, the amount may be paid to such person - without requiring the appointment of a guardian - by paying such amount to anyone over the age of twenty-one (21) years, who submits satisfactory proof that he or she is supporting and maintaining such person, and gives assurance to the Committee in satisfactory form that the monies so paid over will be used for such purposes.

AMENDMENT AND TERMINATION

30. The parties hereto may at any time and from time to time modify this Agreement in any of its terms, or terminate the same in its entirety, and neither the making of this Agreement nor the creation of any Fund pursuant thereto shall be considered as giving any Employee or any person whatsoever any legal or equitable right against the Union, the Employer, any Employer, the Committee and/or any Fund, except such right as is specifically provided for herein, or given by action of the Committee duly taken in accordance with the provisions hereof.

31. a. The Pension Trust Fund and the Trust Fund to be used for the payment of other benefits under this Fund may be terminated when there is no longer in force any agreement between the Employers and the Union requiring Employer contributions to this Fund for the purposes hereinabove provided. This Fund may, likewise, be terminated at any time by the unanimous vote of all

members of the Committee with the consent of the Employer and the Union.

b. In the event of a termination of the Pension Trust Fund the Committee shall apply the funds to pay or provide for the payment of any and all obligations of said Trust and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of said Trust; provided, however, that no part of the corpus or income of said Trust shall be used for or diverted to purposes other than the exclusive benefit of retired Employees and Employees eligible for retirement or the administrative expenses of said Pension Trust Fund or for other payments in accordance with the provisions of such Fund.

c. Upon termination of the Fund, the Committee shall forthwith notify the Union, the Employer and each Employer and all other necessary parties, and shall continue as members of the Committee for the purpose of winding up the affairs of the Trust.

32. Notwithstanding anything contained in this Agreement, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to Employees entitled to benefits hereunder, for any part of the corpus or income of the trusts hereby created to be used for or diverted to purposes other than exclusive benefit of such Employees.

33. In the event that this Agreement terminates by operation of any provision hereof, or by mutual consent of the parties, then (a) no one affected thereby shall have any right or recourse of any kind against the Fund, the Union, the Employer, or the Employers, and (b) the funds then on hand shall be applied as prescribed in Section 32 hereof.

34. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the

said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers and affixed their corporate seals on the date appearing above.

NEW YORK LAMP AND SHADE MANUFACTURERS ASSOCIATION

By: Simon Grafstein
Chairman

By: Leonard Gluck
Secretary

MANUFACTURERS OF ILLUMINATION PRODUCTS, INC.

By: [signature]
President

By: [signature]
Secretary

LOCAL UNION NO. 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO.

By: Edward J. Cleary
President

By: Thomas VanArsdale
Business Manager

EMPLOYER TRUSTEES

Hannibal O. Miller

John F. Dwight

[signature]

UNION TRUSTEES

Karl Mork

Fred Lundgren

Leo Hunter

EMPLOYER TRUSTEES

Leonard Glusko

Simon Grafstein

Max Fishel

Walter Hellis

Edward P. Kenny

Jerome Schnitzer

Kenneth Upton

UNION TRUSTEES

John Scacca

Albert G. Bauer

Joseph Fox

Louis Stein

John Cox

Henry Van Cleedale, Jr.

Thomas Van Cleedale

EMPLOYEE WELFARE OR PENSION BENEFIT PLAN
ANNUAL REPORT FORM

March 1

(Day) (Month)

EMPLOYEES RETIREMENT FUND OF THE
ILLUMINATION PRODUCTS INDUSTRY
153-11 JEWEL AVE,
FLUSHING, NEW YORK 11365

Mail two copies of the co
plete form and attac
required documents to t
Office of Labor-Manageme
and Welfare-Pension R
ports, U.S. Department
Labor, Washington, D.
20210.

FILL OUT EACH ITEM. REFER TO INSTRUCTIONS BEFORE ANSWERING. INSTRUCTION NUMBERS CORRESPOND TO ITEMS ON THE FORM.

PART I—TO BE COMPLETED BY ALL PLANS

Part 1—SECTION A

Except as Otherwise Indicated, All Items in Part I Should be Filled in or Marked "None" or "N.A." (Not Applicable) as Appropriate.

Name of Employer, Employer Association, or Employee Organization With Which Plan is Identified: MANUFACTURERS OF ILLUMINATIONS PRODUCTS INC.

Was the plan's name, company or organization name used in the last report for this plan? ☐ Yes ☐ No

If "No," state name that was used .....

Street Address of Principal Office of Plan: (153-11) (Number) JEWEL AVE. (Street) FLUSHING (City) N.Y. (State) 11365 (ZIP Code)

Name of Plan (See page 3 of instructions): EMPLOYEES RETIREMENT FUND OF THE I.P.I.

Part 1—SECTION B

Indicate by checking the appropriate box below the type of plan for which this report is being submitted:

☐ a. Welfare Benefit Plan (Provides medical, surgical, or hospital care or benefits in event of sickness, accident, disability, death, or unemployment, through the purchase of insurance, or otherwise).

☐ b. Pension Benefit Plan (Provides retirement benefits by the purchase of insurance, annuity contracts, or otherwise, and includes profit-sharing plan, savings and thrift plan, or stock purchase plan that provides benefits at or after retirement. Includes plans providing benefits supplemental to a pension plan and retirement for age, service, or disability).

☒ c. Combination of a and b.

Check the category that best describes the groups covered by the Plan:

☐ a. All employees ☐ b. Hourly rate employees ☐ c. Salaried employees ☑ d. Other (Specify): BARGAINING UNIT

Has the Plan been amended during the reporting year? ☑ Yes ☐ No

Check by checking the appropriate boxes the types of benefits and the method of providing such benefits.

TYPES OF BENEFITS (1)	METHOD OF PROVIDING BENEFITS: Insurance Carrier, Service or Other Organization (INSURED) (2)	Trust or Other Separate Investment Fund (SELF-INSURED) (3)	Directly (Assets of Employee Union, etc. (UNFUNDED) (4)
Life Insurance or Death Benefits	☐	☐	☐
Accidental Death and Dismemberment	☐	☐	☐
Accident and Sickness Insurance	☐	☐	☐
Medical, Surgical or Hospital Care	☐	☐	☐
Sickness	☐	☐	☐
Medical	☐	☐	☐
Pensions	☐	☐	☐
Other	☐	☐	☐

A-50

If boxes have been checked only in Part I, Section B, Item 4, Column 4 (all benefits are unfunded), Part II is to be completed, and Items 5, 6, 7 and 8 of Part I, Section B, need not be answered.

5. Enter the number of participants covered by the Plan during the year covered by this report:

a. Employed (or currently named as active) 42

b. Retired employees 3

c. Total 45

7. If some of the benefits are unfunded, enter the amount of such benefits provided by the Plan during the year covered by this report. (Unfunded benefits are those provided solely from the general assets of the employer, union or other organization. They are not provided or funded through an Insurance Carrier or through the medium of a Trust or other Separately Maintained Fund) ..... $

8. a. Was the Plan insured by a fidelity bond against losses through fraud or dishonesty during the reporting year? ☒ Yes ☐ No

b. If Yes, what is maximum amount recoverable for loss caused by any person bonded thereunder? $100,000

c. Enter the name of the surety company HOME INDEMNITY

d. If No, explain .....

e. Was there discovered during the reporting year any loss to the Plan caused by the fraud or dishonesty of any administrator, officer, employee of the plan, or other person handling funds of the Plan? ☐ Yes ☒ No

If yes, list amounts of such losses, amount recovered for each loss from the bonding company, and amount recovered from the individual causing the loss. The individual causing the loss need not be identified in your answer. (If the amounts recovered do not equal the total loss sustained, explain) .....

Part II

TO BE COMPLETED FOR COMPLETELY UNFUNDED PLANS ONLY

Information To Be Furnished by Plans Checking Boxes Only in Part I, Section B, Item 4, Column 4

Enter the following information for the unfunded benefits furnished during the year covered by this Report and during each of the 4 preceding years. Enter current reporting year on first line:

A—Welfare Plan Benefits

Year Ending (Month, Day, Year) (1)	Unfunded Benefits Paid Under Plan (2)	Average Number of Persons Covered by the Plan (3)
	$	
	$	
	$	
	$	
	$	

B—Pension Plan Benefits

Year Ending (Month, Day, Year) (1)	Average Number of Participants			Total Unfunded Benefits Paid Under Plan (5)	Unfunded Benefits Paid to Retired Employees[1] (6)
	Total (2)	Nonretired (3)	Retired (4)		
				$	$
				$	$
				$	$
				$	$
				$	$

[1] Enter in this column if it differs from amount in Column 5.

INSTRUCTIONS TO ADMINISTRATOR OF COMPLETELY UNFUNDED PLAN

The completion of PARTS I and II provides all the information required by the Act for an annual report of a Completely Unfunded Plan. [illegible] Preserve

A-52

Part IV

[illegible] trust or other organization maintained [illegible] to be exempt [illegible] premiums or [illegible] under [illegible] of annuity contracts or (3) [illegible]

Part IV—Section A
Statement of Assets and Liabilities

Name of Plan EMPLOYEES RETIREMENT FUND OF THE ILLUMINATING PRODUCTS INDUSTRY

File No. WP-47755

For Year Beginning MAY 1, 1972 (Month, Day, Year) and Ending APRIL 30, 1973 (Month, Day, Year)

Item	ASSETS	End of Prior Year	End of Reporting Year
1.	Cash	$ 125,537	$ 241,027
2.	Receivables:		
	a. Contributions: (See Item 1B)		
	(1) Employer	171,549	254,900
	(2) Other (Specify)		
	b. Dividends or experience rating refunds		
	c. Other (Specify) DUE FROM OTHER FUND		490
3.	Investments: (Other than real estate)		
	a. Bank deposits at interest and deposits or shares in savings and loan associations	2,633,344	2,025,298
	b. Stock:		
	(1) Preferred		
	(2) Common		
	c. Bonds and debentures:		
	(1) Government obligations:		
	(a) Federal	8,033,172	9,714,494
	(b) State and municipal		
	(2) Foreign government obligations		
	(3) Nongovernment obligations		
	d. Common Trusts:		
	(1) (Identify) MEL-CIO MORTGAGE INVESTMENT TRUST	243,151	251,722
	(2) (Identify)	397,522	397,522
	e. Subsidiary organizations (See Instructions)		
	(Identify and indicate percentage of ownership by this Plan in the subsidiary)		
	(1) %		
	(2) %		
4.	Real estate loans and mortgages	256,496	201,502
5.	Loans and Notes Receivable: (Other than real estate)		
	a. Secured		
	b. Unsecured		
6.	Real Estate:		
	a. Operated		
	b. Other real estate		
	FURNITURE AND FIXTURES		
7.	Other Assets:		
	a. Accrued income	217,452	249,605
	b. Prepaid expenses	31,117	25,812
	c. Other (Specify) FRANKLIN NATIONAL BANK CUSTODIAL ACCT. NO. (SCHED)	621,487	620,146
	Total Assets	$13,693,291	$14,309,079
	LIABILITIES		
	Insurance and annuity premiums payable		
	Claims payable (Not covered by insurance)	$ 24,334	$ 21,530
	Accounts payable		
	Fees and expenses		
	Other liabilities (Specify) FEDERAL WITHHOLDING TAX		2,774
	Total liabilities (Item 9)	23	23

SCHEDULE C

EMPLOYEES RETIREMENT FUND OF THE INCORPORATED VILLAGE OF [illegible]

PENSION TRUST FUND

[illegible]

ASSETS HELD IN CUSTODIAL INVESTMENT ACCOUNT

Cash in Franklin National Bank		$ 19
Cash in Emigrant Savings Bank		21,328
Accrued Interest Receivable		10,895
Investments (at cost):		
Ohio Power Co. 1st Mortgage Bonds 6-5/8% due 10/1/79 (Maturity Value $250,000)	$247,969	
Clark Equipment Corp. Deb. 7.85% due 12/15/91	100,000	
General Electric Credit Notes 7% due 2/15/79	100,000	
Ford Motor Credit Notes 7% due 4/15/80	100,000	
Pfizer Inc. Conv. 4% Deb. due 2/15/97	50,000	
Federal National Mortgage Association Bonds 6.6% due 12/10/80 (Maturity Value $125,000)	122,012	
U. S. Treasury Bills due 5/31/73 (Maturity Value $140,000)	137,943	
Total Investments		857,924
Total Assets in Custodial Investment Account		$890,166

INTEREST EARNED FOR THE YEAR ENDED APRIL 30, 1973

Emigrant Savings Bank	$ 472
Ohio Power Corp. Bonds	17,215
Clark Equipment Corp. Debentures	7,828
General Electric Credit Notes	7,250
Ford Motor Credit Notes	3,361
Pfizer Inc. Conv. Debentures	1,997
Federal National Mortgage Assn. Bond	1,375
U. S. Treasury Bills	9,231
Total	$ 49,729

SUMMARY OF ACCOUNT

Balance in Custodial Investment Account - May 1, 1972		$641,437
Cash Transferred to Account:		
August 15, 1972	$100,000	
August 22, 1972	100,000	
Interest Earned - Year Ended April 30, 1973		200,000
		49,729
Total Investments and Accrued Interest April 1, 1973 (as above)		$890,166

A-5B

Part II—Section 3

Statement of Receipts and Disbursements

(Month) (Year) Year Ended (Month) (Day) (Year)

CASH RECEIPTS

1. Contributions: (Exclude amounts entered in Item 2)		
a. Employer (Schedule 1)	$ 1,794,772	
b. Employees		
c. Other (Specify)		
d. Total Contributions		$ 1,794,772
2. Dividends and Experience Rating Refunds From Insurance Companies		
3. Receipts From Investments:		
a. Interest	$ 799,593	
b. Dividends		
c. Rents		
d. Other (Specify)		
e. Total Receipts From Investments		799,593
4. Receipts From Sale of Assets:		
a. Sales to parties-in-interest		
b. Sales to others	$ 2,423,208	
c. Total Receipts From Sale of Assets (Schedule 2)		2,423,208
5. Other Receipts:		
a. Loans (Money borrowed)	$	
b. Other (Specify)		
c. Total Other Receipts		
6. Total Receipts		$ 5,017,573

CASH DISBURSEMENTS

7. Insurance and Annuity Premiums Paid to Insurance Carriers and Payments to Service Organizations (Including Prepaid Medical Plans)		$
8. Benefits Provided Directly by the Trust or Separately Maintained Fund		1,247,581
9. Payments to an Organization Maintained by the Plan for the Purpose of Providing Benefits to Participants (Attach latest operating statement of the Organization showing detail of administrative expenses, supplies, fees, etc.)		
10. Payments or Contract Fees Paid to Independent Organizations or Individuals Providing Plan Benefits (Clinics, hospitals, doctors, etc.)		
11. Administrative Expenses:		
a. Salaries (Schedule 3)	$	
b. Allowances, expenses, etc. (Schedule 3)		
c. Taxes		
d. Fees and commissions (Schedule 4)	6,287	
e. Rent		
f. Insurance premiums		
g. Fidelity bond premiums		
h. Other administrative expenses (Specify) SCHEDULE ATTACHED	74,229	
i. Total Administrative Expenses		80,516
12. Purchase of Assets:		
a. Investments (Other than real estate)		
(1) Purchased from parties-in-interest	$	
(2) Purchased from others	3,376,923	
b. Real Estate		
(1) Purchased from parties-in-interest		
(2) Purchased from others		
c. Total Purchase of Assets		3,376,923
13. Loans (Money loaned)		
14. Other Disbursements: (Specify)		

190

A-54

3. Indicate the total amount of fund assets (as valued on the Statement of Assets and Liabilities) which have been pledged as security for loans or encumbered in any other manner		$ N/E
[illegible]		$ N/E
[illegible]		
[illegible] total amount of assets (as valued on the above or last year's Statement of Assets and Liabilities) [illegible] reporting year, have been disposed of in any manner other than by sale. See instructions		$ 3 661
5. If any employer contributions are overdue for 3 months or longer, enter the total amount of such arrearage here to the extent that such amount is known or determinable		$ 3 500

Indicate accounting basis by check. ☐ Cash ☑ Accrual

Plans on a cash basis must attach a statement of significant unrecorded assets and liabilities.

State basis of determining the amount at which assets listed in Part IV, Section A, Items 1 through 8, are carried and reported

ORIGINAL COST ADJUSTED BY AMORTIZATION OF PREMIUMS AND DISCOUNTS

X DISCOUNT AMORTIZATION

X PREMIUM AMORTIZATION

FIS 4611.5

LINE 11 OTHER ADMINISTRATIVE EXPENSES	
ALLOCATED SHARE OF COMBINED PENSION FUNDS ACCOUNT ADMINISTRATIVE EXPENSE	3000
CENTRAL LABOR REHABILITATION COUNCIL OF WESTCHESTER	1750
STATIONERY AND PRINTING	1296
MISCELLANEOUS	117
DOMESTIC FEE	1146
TOTAL	7459

Part I—Section 3

Supporting Schedules for Specific Items Shown on Section 3—Statement of Receipts and Disbursements

If more space is required, attach additional sheets and identify. Show total at bottom of each sheet and carry forward.

SCHEDULE 1

Contributions Received from Employers

(Detail of total shown for Item 1a. Statement of Receipts and Disbursements)

Name and Location of Employer (See Instructions) (1)	Contributions Received During Reporting Period (2)
SCHEDULE ATTACHED	$
Subtotal from additional listing.	$
Total	To Item 1a. $ 1 706 744

SCHEDULE 2

Receipts From Sale of Assets

(Detail of total shown for Item 4c. Statement of Receipts and Disbursements)

Category of Assets Sold (1)	Cost (2)	Book Value (3)	Gross Sales Price		Amount Received (Net) (5)
			Cash (4)	Other (5)	
1. Deposits w/ Lenders	$	$	$	$	$
2. Treas. Notes	1,753,069	1,753,069	1,753,069		1,753,069
3. Treas. Bonds	190,000	190,000	190,000		190,000
4. Treas. Inf. Bonds	185,000	185,000	185,000		185,000
5. Gov. Notes	75,000	75,000	75,000		75,000
6. Gov. Bonds					
7. Gov. Agency Bonds	100,000	100,000	100,000		100,000
8. Corp. Bonds	63,000	63,000	63,000		63,000
9. Corp. Stocks	4,000	4,000	4,000		4,000
10. Mutual Funds	43,069	43,069	43,069		43,069
Subtotal from additional listing	$	$	$	$	$
Total	2,423,069	2,423,069	2,423,069		2,423,069

EXHIBIT B-2

EMPLOYER REPORTING FOR CWA MAINTENANCE PROJECT [illegible]

DEFICIT FUND

CONTRIBUTION RATIO DETERMINATION

[illegible]

Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
A.B.C. Lamp Shade	2/22/73	10	$ 2,463
Robert Abbey	2/23	140	27,888
Acme Lanterns	4/6	16	6,568
Ainsley Lamps, Inc.	3/30	55	15,178
All Favorite Creations	3/28	19	4,257
Appts. by D. Dessauer (out of bus. 7/28/72)	7/28/72		142
Ariste Lamp Co.	3/20	35	8,027
I. W. A[illegible]	3/30	85	37,121
Art Lighting Co.	4/5	20	3,059
Artemis Studios, Inc.	2/24	21	4,681
Art-N-Decor	4/23/72	2	270
Astoria Welding & Repair	3/3	14	7,823
Atlite Lighting	4/6	106	37,819
L. Baldinger & Sons	4/11	10	6,453
Bay White Metal Casting	2/28	19	5,133
Beaux Arts	3/16	7	5,167
Belleville	2/23	78	38,761
Benrose Lamp Co.	3/29	7	2,241
Bergen Art Metal	4/13	7	3,454
Bibi Cont'l	2/28	37	10,400
Brite Lite Lamp Co.	3/2	77	16,396
Brite Metal Industries	3/22	11	2,727
C.G.L. Industries	3/3	10	4,509
Camelot Lighting	12/27/72	10	2,219
Chatham Glass Co.	3/23	13	3,293
Chatham Metal Spinning	4/3	60	25,571
Clinton Lighting	3/30	3	2,054
Columbia Lighting	2/25	5	1,502
Colony Studios	3/8	6	1,212
Continental L & S	1/26	7	1,734
Cousins Corp.	3/4	342	180,001
Creative Lamp	2/23	1	344
Crown Lamp Co.	1/31	9	2,021
Crystal Mart, Inc.	4/13	18	5,217
Curtis Electro	2/9	30	23,103
Colonial Silversmith	3/30	2	899

Name	Last Reporting Week	No. of Employees at last Reporting Week	Count Earnings
Harry Dandel, Inc.	3/23/73	32	$ 7,222
Denice Lamp and Shade	3/24	15	2,940
Diamond Lamp	2/2	1	546
Diamond Lighting	12/15/72	29	23,578
Diana Studios, Inc.	2/24	50	11,057
Duhe Lamp Shade Co.	4/7	31	7,450
Dumont Lamp Co., Inc.	4/11	14	3,477
Dunhill Mfg. & Dist. Co.	4/3	61	16,327
Eastern Art Studios	2/9	5	2,150
Eastern Lighting (out of bus. 10/5/66 - payment on a/c)			665
Edison Price	4/4	23	11,251
Elco Lamp Shade Co.	2/27	42	12,214
E-Z-Lite Co., Inc.	3/8	42	12,068
Empire Lamp & Shade Corp.(out of bus.5/5/72)	4/22/72		70
Everlite Co.	4/5	27	8,222
F.S.A. (out of bus. 7/28/72)	7/28/72		703
Fine Arts in Plastics	1/27	55	17,171
Fitch Housing Co., Inc.	3/23	1	43
Fitch Housing Co., Inc.	2/28	1	387
Florence Design	8/25/72	2	333
Fourth Housing Co., Inc.	3/23	1	86
Frank Corp.	4/3	95	51,903
Froelich Litecraft	3/16	10	3,395
G.F.C. Mfg. Co.	4/7	13	3,676
Georgian Lighting (BAL)	3/14	26	7,699
Gerrefish Lighting	3/21	3	1,213
Glen A Lamp Co. Inc.	3/7	22	8,211
Glo Metal Products	2/23	117	36,677
Govan Mfg. Co.	2/2	3	1,480
Graham Lighting	3/25	97	31,713
Grun Glass	3/23	5	3,403
H. H. Duey & Co.	3/23	12	3,958
H. Hubbell & Sons	3/31	5	2,122
Harris Bros.	3/30	4	1,433
H. H. Hyamson, Inc.	4/11	53	15,200

Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Hours
Chas Guggenheim Lamps	12/23/72	7	2,077
H. & H. Sheet Metal	3/30/73	17	5,830
Holeolite Co.	4/7	61	27,395
Holdi Lamp	1/25	9	2,824
Hundley & Kraw, Inc.	10/24/72	6	2,402
Hirsch-Fortuna Co.	3/9	69	18,038
Hollback Metalcraft	1/7	15	7,697
Jac-Mar Shade Co.	1/31	10	2,159
Jo-Hallis, Inc.	2/28	10	1,943
Jubilee Lamp Shade Co.	4/6	18	5,653
Kayess Lamp Co.	4/5	33	8,137
Kay-O-Products	2/28	38	9,303
Kenbert Lighting	1/24	67	33,153
Kenney Assoc.	3/15	79	18,969
Kent Lighting	2/11	33	15,289
Kliegl Brothers	3/13	86	49,898
Kliegl Reflector	3/25	3	1,512
Koch & Lowy	3/28	30	9,374
Kothen Lgtn Co.	4/11	31	7,461
Landau Metal Prod.	3/4	48	19,803
The Lande Co.	3/29	7	1,879
Lasdon Lamp	4/8	8	3,440
Legion Lighting	4/6	23	10,342
Light Dimensions Ltd.	1/31	3	814
Lightalarms	3/24	54	19,889
Lind CO	4/12	4	3,121
Lyric Lighting	3/24	4	1,555
Ma Thilben	3/9	133	54,204
Majestic Metal Co.	4/1	34	14,934
Marvel Mfg. Co.	3/29	39	12,224
Marvel Imports	4/6	6	2,230
Mayflower Mfg, Inc.	1/20	3	933
Mc Glen Industries	11/24/72	5	1,211
Merritt Lamp & Shade	3/1	25	5,871
Mirrolay Lamps, Inc.	4/4	18	4,271

[illegible] REPORTING FOR 12 OUT OF 13 PERIODS DURING [illegible]

Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Earnings
Metropolitan Lighting	3/23/73	9	$ 4,800
Mobilite, Inc.	2/27	131	28,153
Modern Chem	4/11	11	4,503
National Lighting	4/6	8	3,825
Nee-Ray Products	1/2	73	33,660
Neela Co.	4/6	13	7,450
Nelson Lamp Co.	4/6	26	6,246
New York Lamp Corp.	3/28	11	2,527
Nova Mfg. Co.	2/24	64	19,341
Nu-Mite Lamp Corp.(merged with Dubos Lite)	7/28/72	8	700
Nu-Process Plastics	2/17	100	24,870
Wm. P. Paul Co.	3/28	11	3,096
Peerless Elec. Co.	2/23	5	2,591
Phoenix Co.	3/29	23	6,132
Phoenix Lighting	3/23	44	15,130
The Pilot Co.	2/21	27	5,750
Plymouth-Marlee Co.	3/30	37	11,039
Puritan Ltg.	4/8	48	20,195
Quaker, Inc.	4/6	52	12,076
Rambusch Dec.	3/16	27	15,335
Raymor Mfg. Co.	3/27	2	1,112
Raymor Mfg. Co. (BAL)	4/3	46	12,682
Regal Lamp & Shade	3/27	14	5,437
Reliance Lamp Co.	3/29	16	4,164
Richlin Co.	1/31	5	1,382
[illegible] Richter, Inc.	2/13	8	4,800
Richter Metalcraft	3/31	81	35,359
Rivendale	3/30	5	2,618
Rola Lamp Co.	10/27/72	3	1,353
Rowlett Novelty Co.	3/23	43	11,082
Ruby Co. (BAL)	3/22	5	1,258
The Ruby Co.	3/22	2	1,111
[illegible] Rush & Co.	4/12	11	3,011
[illegible] L Oldehoman	2/23	16	4,110

EXHIBIT B

Firm	Last Reporting Month	Total Employees in Last Reporting Month	Total Payroll
Knight Bros.	1/31/73	2	$ 588
Schurz-Communale Co.	2/24	49	16,033
Louis J. Schwarcz	2/23	12	1,751
Serv. for the Home	3/15	13	5,752
Shade Div. - Corona	2/23	3	1,353
Sheridan Industries	2/7	65	14,355
The Simac Co.	2/25	58	29,532
Solum Corp.	2/10	19	7,169
Spear Lighting	1/3	17	6,202
State Polishing	12/30/72	21	5,244
Street Lighting	3/30	23	8,457
Sunlight Reflector	3/25	6	2,883
Supro-Lum Mfg. Co.	3/30/72	2	266
Norman Tauber Inc.(out of bus. 12/31/72)	9/3		1,903
Tyndale Lamps	4/8	52	18,694
Vanessa Classics	3/21	31	11,193
Venlaf Ltd.	3/2	1	432
Chas. Wagner & Co.	3/27	11	5,354
Weinland's Inc.	12/29/72	2	765
Weinstock Lamp	3/29	11	3,169
Weiss & Dinellor	3/24	18	6,851
Dath Weissman Co.	3/14	30	7,613
Chas. Winston & Co.	3/30	3	1,349
Wold Creations (Bankrupt)			215
Wolgrow Products	12/30/72	20	7,614
Workbench Workshop	4/6	14	5,215
Totals		[illegible]	[illegible]

RECONCILIATION OF CASH BASIS TO ACCRUAL BASIS

Contributions Received (Cash Basis)	$1,706,744
Less: Contributions Receivable - April 30, 1972	171,519
	$1,535,225
Add: Contributions Receivable - April 30, 1973	254,000
Income from Contributions (Accrual Basis)	$1,789,225

SCHEDULE 3

(1)	(2)	(3)	(4)	(5)	(6)
	$	$	$	$	$
Subtotal from additional listing. . . .	$	$	$	$	$
Total	$ To Item 11a.	$	$	$	$ To Item 11b.

SCHEDULE 4

Fees and Commissions Paid and Charged to the Plan

(Detail of total shown for Item 11d. Statement of Receipts and Disbursements)

All fees and commissions paid and charged to the Plan must be reported here. Include payments to an individual, firm, or corporation which administers the affairs of the Plan on a contract or fee basis, and fees and commissions paid to salaried administrators or others whose salaries are reported in Schedule 3, above. (Exclude those fees and commissions paid by the insurer and set forth in Part III, Section A, Item 2; also exclude fees for medical, dental, optical, and other services provided to participants.)

To Whom Paid (Give name and address) (1)	Purpose for Which Paid (2)	Amount of— Commissions (3)	Amount of— Fees (4)	Total Commissions and Fees (5)
[illegible] 350 [illegible] Ave. New York, NY	Accounting	$	$ 367	$ 367
[illegible] Stein [illegible] New York	Legal		1000	1000
[illegible] Co. [illegible]	Actuarial Study			

SIGNATURE AND VERIFICATION

[illegible] shall detail the necessary basic information and data from which the report and other documents filed may be [illegible] or audited and checked for accuracy and completeness and shall be maintained and preserved for examination for at least [illegible] the date of filing the report. These records include vouchers, worksheets, receipts, and applicable resolutions.

The report shall be signed by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator. In the [illegible] representative must sign the report. The information contained in the report (including sections, schedules, and other documents attached) shall either be (1) sworn to by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator before a notary public or other officer authorized to administer oaths, or (2) certified to by an independent certified or licensed public accountant based upon a comprehensive audit conducted in accordance with accepted standards of auditing. If method (2) is used attach the accountant's certificate which shall state facts indicating that the above requirements are met, and check this box:

☒ Certification described in (2) above is attached.

SIGNATURES

(Please observe instructions for completing this page.)

I/We, the administrator, or ROWLAND J. SIMES CHAIRMAN & THOMAS VAN ARSDALE TREAS. (Title or Position) of

(Employer or Employee Organization, Partnership, Board of Trustees, Committee, etc.) which is the administrator who is/are duly authorized to sign for and on behalf of said administrator, declare(s) under the applicable penalties of law that the information in this report (including the information contained in any accompanying schedules and attachments) has been examined by me/us and is to the best of my/our knowledge and belief, true, correct and complete.

SIGN HERE	TYPE OR PRINT NAME HERE	NAME OF COMPANY OR UNION AND POSITION THEREIN
Rowland J. Simes	ROWLAND J. SIMES	SIMES CO PRES.
Thomas Van Arsdale	THOMAS VAN ARSDALE	LOCAL UNION 3 IBEW BUS. MGR.

VERIFICATION

Signed and sworn to before me

this [illegible] day of [illegible], 19[illegible]

(Notary)

DAVID S. PESCH, C.P.A.
WILLIAM MAGDSICK, C.P.A.
CLIFFORD D. PARSONS, C.P.A.
EDWARD L. FREEMAN, C.P.A.

9/12/73
(Date)

Re: EMPLOYEES RETIREMENT FUND OF THE ILLUMINATING PRODUCTS DIVI

Year: FYE 4-30-73

We have examined the books and records of the above organization for the year ended APRIL 30, 1973. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary under the circumstances.

In our opinion the accompanying statements present fairly the Fund Balance (Surplus) at 4-30-73, and Cash Receipts and Disbursements for the year then ended, applied on a basis consistent with that of the preceding year.

DAVID S. PESCH & CO.
Certified Public Accountants

partment of Labor
Form D-2
evised 1971

EMPLOYEE WELFARE OR PENSION BENEFIT PLAN
ANNUAL REPORT FORM

Form approved.
Budget Bureau Number 44R1115.2.

This form is prescribed for publishing annual reports of employee welfare or pension benefit plans as required by law. Use a separate form for each separate Plan.

Enter file number which has been assigned by the U.S. Dept. of Labor

l Report for Year
g APRIL 30, 1972
(Month) (Day) (Year)

TAC	FC
	5

File No.	WP- 47985	

TANT: If label is
it top blue part and
n same box on next
f form. If label is cor-
eave blank items 1, 2
in Section A below.
l is incorrect, enter
s in Items 1, 2 and 3.

047985
ILLUMINATION PRODUCTS INDUSTRY
RETIREMENT FUND
158 11 JEWEL AVE
FLUSHING N Y 11365

Mail two copies of the completed form and accompanying documents to the Office of Labor-Management and Welfare-Pension Reports, U.S. Department of Labor, Washington, D.C. 20210

ANSWER EACH ITEM. REFER TO INSTRUCTIONS BEFORE ANSWERING. INSTRUCTION NUMBERS CORRESPOND TO ITEMS ON THE FORM.

PART I—TO BE COMPLETED BY ALL PLANS

Part I—SECTION A

xcept as Otherwise Indicated, All Items in Part I Should be Filled in or Marked "None" or "N.A." (Not Applicable) as Appropriate.

me of Employer, Employer Association, Employee Organization With Which n Is Identified .....

s the same company or organization name used in the last report for this plan? ☐ Yes ☐ No

"No," state name that was used .....

eet Address of Principal ce of Plan .....
(Number) (Street) (City) (State) (ZIP Code)

me of Plan (See page 3 of instructions) .....

Part I—SECTION B

cate by checking the appropriate box below the type of plan for which this report is being submitted:

a. Welfare Benefit Plan (Provides medical, surgical, or hospital care or benefits in event of sickness, accident, disability, death, or unemployment, through the purchase of insurance, or otherwise).

b. Pension Benefit Plan (Provides retirement benefits by the purchase of insurance, annuity contracts, or otherwise, and includes any profit-sharing plan, savings and thrift plan, or stock purchase plan that provides benefits at or after retirement. Includes death benefits supplemental to a pension plan and retirement for age, service, or disability).

c. Combination of a and b.

ck the category that best describes the groups covered by the Plan:
a. All employees ☐ b. Hourly rate employees ☐ c. Salaried employees ☒ d. Other (Specify): BARGAINING UNIT

the Plan been amended during the reporting year? ☐ Yes ☒ No

cate by checking the appropriate boxes the types of benefits and the method of providing such benefits.

TYPES OF BENEFITS (1)	METHOD OF PROVIDING BENEFITS: Insurance Carrier, Service or Other Organization[3] (INSURED) (2)	Trust or Other Separately Maintained Fund[3] (SELF-INSURED) (3)	General Assets of Employer, Union, etc. (UNFUNDED) (4)
Insurance or Death Benefits	☐	☒	☐
dental Death and Dismemberment	☐	☐	☐
dent and Sickness Insurance	☐	☐	☐
Sick Leave	☐	☐	☐
ital	☐	☒	☐
ical	☐	☒	☐
cal	☐	☒	☐
al	☐	☒	☐
mployment	☐	☐	☐
rement for Age or Service	☐	☒	☐
ement for Disability	☐	☒	☐

A-66

ny boxes in this column have been checked, applicable sections of Part III are to be completed.
ny boxes in this column have been checked, applicable sections of Part IV are to be completed. (Do not include benefits provided through an insurance urchased by a Fund. These are to be reported in Column (2) as Insured.)

If boxes have been checked only in Part I, Section B, Item 4, Column 4 (all benefits are unfunded), Part II is to be completed, and Items 5, 6, 7, and 8 of Part I, Section B, need not be answered.

5. Indicate the total amount of contributions made to the Plan during the year covered by this report: (Show all contributions to the Plan, including insurance or annuity premiums, or subscription charges paid. Do not include dividends or retroactive rate refunds credited or unfunded benefits).

Employer(s) $ 1,629,531 Employees $ ..... Other $ .....

6. Enter the number of participants covered by the Plan during the year covered by this report:

a. Employed (or currently carried as active) 4,660

b. Retired employees APPROXIMATE 450

c. Total 5,110

7. If some of the benefits are unfunded, enter the amount of such benefits provided by the Plan during the year covered by this report. (Unfunded benefits are those provided solely from the general assets of the employer, union or other organization. They are not provided or funded through an Insurance Carrier or through the medium of a Trust or other Separately Maintained Fund) $ .....

8. a. Was the Plan insured by a fidelity bond against losses through fraud or dishonesty during the reporting year? ☒ Yes ☐ No

If Yes, what is maximum amount recoverable for loss caused by any person bonded thereunder? $ 500,000

Enter the name of the surety company HOME INDEMNITY

If No, explain .....

b. Was there discovered during the reporting year any loss to the Plan caused by the fraud or dishonesty of any administrator, officer, employee of the plan, or other person handling funds of the Plan? ☐ Yes ☒ No

If yes, list amounts of such losses, amount recovered for each loss from the bonding company, and amount recovered from the individual causing the loss. The individual causing the loss need not be identified in your answer. (If the amounts recovered do not equal the total loss sustained, explain) .....

Part II

TO BE COMPLETED FOR COMPLETELY UNFUNDED PLANS ONLY

Information To Be Furnished by Plans Checking Boxes Only in Part I, Section B, Item 4, Column 4

Enter the following information for the unfunded benefits furnished during the year covered by this Report and during each of the 4 preceding years. Enter current reporting year on first line:

A—Welfare Plan Benefits

Year Ending (Month, Day, Year) (1)	Unfunded Benefits Paid Under Plan (2)	Average Number of Persons Covered by the Plan (3)
	$	
	$	
	$	
	$	
	$	

B—Pension Plan Benefits

Year Ending (Month, Day, Year) (1)	Average Number of Participants			Total Unfunded Benefits Paid Under Plan (5)	Unfunded Benefits Paid to Retired Employees[1] (6)
	Total (2)	Nonretired (3)	Retired (4)		
				$	$
				$	$
				$	$
				$	$
				$	$

[1] Enter total in this column if it differs from amount in Column 5.

INSTRUCTIONS TO ADMINISTRATOR OF COMPLETELY UNFUNDED PLAN

The completion of PARTS I and II provides all the information required by the Act for an annual report of a Completely Unfunded Plan. The administrator of such a plan, after completing PARTS I and II, should execute and attach the signature and verification section in accordance with the instructions and mail two copies of the completed form to the Office of Labor-Management and Welfare-Pension Reports, Washington, D.C., 20210.

A-67

Part IV

Part IV data for trust or other separately maintained fund are to be completed for a plan involving a trust or other separately maintained fund. It also is to be completed for a plan which: (1) Has incurred expenses other than: (a) Payments for unfunded benefits or (b) Insurance or annuity premiums or subscription charges paid to an insurance carrier or service or other organization; or (2) Has assets other than: (a) Insurance or annuity contracts or (b) Contributions in the process of payment or collection.

Part IV—Section A
Statement of Assets and Liabilities

Name of Plan EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY

File No. WP- 47935

For Year Beginning MAY 1, 1971 (Month, Day, Year) and Ending APRIL 30, 1972 (Month, Day, Year)

Item	ASSETS	End of Prior Year	End of Reporting Year
a.	Cash	$ 429,930	$ 425,577
b.	Receivables:		
a.	Contributions: (See Item 18)		
(1)	Employer	153,570	171,549
(2)	Other (Specify)		
b.	Dividends or experience rating refunds		
c.	Other (Specify) DUE FROM JOINT INDUST. BD, ILLUMINATION PROD. IND.	4,557	
c.	Investments: (Other than real estate)		
a.	Bank deposits at interest and deposits or shares in savings and loan associations	2,221,958	2,633,366
b.	Stocks:		
(1)	Preferred		
(2)	Common		
c.	Bonds and debentures:		
(1)	Government obligations:		
(a)	Federal	7,974,699	8,033,172
(b)	State and municipal		
(2)	Foreign government obligations		
(3)	Nongovernment obligations		
d.	Common Trusts:	303,151	343,151 — ?
(1)	(Identify) AFL-CIO MORTGAGE INVESTMENT TRUST	397,822	397,822 — ?
(2)	(Identify) FRANKLIN NATIONAL BANK - CUSTODIAL INVESTMENT ACCOUNT		
e.	Subsidiary organizations (See Instructions)		
	(Identify and indicate percentage of ownership by this Plan in the subsidiary)		
(1)	%		
(2)	%		
d.	Real estate loans and mortgages	284,412	258,596
e.	Loans and Notes Receivable: (Other than real estate)		
a.	Secured		
b.	Unsecured		
f.	Real Estate:		
a.	Operated		
b.	Other real estate		
g.	Other Assets: FURN & FIX		
a.	Accrued income	220,463	217,452
b.	Prepaid expenses	19,075	31,117
c.	Other (Specify) FRANKLIN NAT'L BANK-CUSTODIAL INVEST. ACCT. (SCHEDULE)		641,437
h.	Total Assets	$12,000,639	$13,153,241
	LIABILITIES		
a.	Insurance and annuity premiums payable	$	$
b.	Unpaid claims (Not covered by insurance)	13,487	26,335
c.	Accounts payable		
d.	Accrued expenses		
e.	Other liabilities (Specify) FEDERAL WITHHOLDING TAX PAYABLE		23
f.	Reserve for future benefits	11,987,152	13,126,883
g.	Total Liabilities and Reserves	$12,000,639	$13,153,241

The assets listed in this statement must be valued on the basis regularly used in valuing investments held in the fund and reported to the U.S. Treasury Department shall be valued at their aggregate cost or present value, whichever is lower, if such a statement is not so required to be filed with the U.S. Treasury Department.

SCHEDULE G

EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY
PENSION TRUST FUND
FRANKLIN NATIONAL BANK - CUSTODIAL INVESTMENT ACCOUNT
APRIL 30, 1972

Assets Held in Custodial Investment Account		
Cash		$ 8,743.82
Accrued Interest Receivable		6,419.00
Investments (at cost):		
Ohio Power Co. 1st Mortgage Bonds 6-5/8% due 10/1/79 (Face $250,000)	$247,656.25	
Clark Equipment Corp. Deb. 7.85% due 12/15/91	100,000.00	
General Electric Credit Notes 7% due 2/15/79	99,750.00	
Pfizer Inc. Conv. 4% Deb. 3/21/72 due 2/15/97	50,000.00	
U. S. Treasury Bills (Maturity Value $130,000) due 6/1/72	128,867.70	
Total Investments		626,273.95
TOTAL ASSETS IN CUSTODIAL INVESTMENT ACCOUNT		$641,436.77

Interest Earned in Custodial Investment Account	
First Mortgage Investors Notes	$ 580.36
Ohio Power Corp. Bonds	7,506.16
Clark Equipment Corp. Debentures	2,945.00
General Electric Credit Notes	1,458.00
Pfizer Inc. Conv. Bonds	220.00
U. S. Treasury Bills	3,727.25
TOTAL INTEREST INCOME	$ 16,436.77

Summary of Account

Cash Transferred to Account	
11/4/71	$480,000.00
11/16/71	75,000.00
11/18/71	20,000.00
1/21/72	50,000.00
Total Cash Transferred to Account	$625,000.00
Interest Earned to April 30, 1972	16,436.77
Total Assets in Account, as above	$641,436.77

DAVID S. FISCH & CO.
CERTIFIED PUBLIC ACCOUNTANTS

Part IV—Section B
Statement of Receipts and Disbursements

Name of Plan EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY

File No. WP- 47955

For Year Beginning MAY (Month) 1 (Day) 1971 (Year) and Ending APRIL (Month) 30 (Day) 1972 (Year)

Item			
	CASH RECEIPTS		
1.	Contributions: (Exclude amounts entered in Item 2)		
	a. Employer (Schedule 1)	$ 1,616,108	
	b. Employee		
	c. Other (Specify)		
	d. Total Contributions		$ 1,616,108
2.	Dividends and Experience Rating Refunds From Insurance Companies		
3.	Receipts From Investments:		
	a. Interest	$ 760,441	
	b. Dividends		
	c. Rents		
	d. Other (Specify)		
	e. Total Receipts From Investments		760,441
4.	Receipts From Sale of Assets:		
	a. Sales to parties-in-interest	$	
	b. Sales to others		
	c. Total Receipts From Sale of Assets (Schedule 2)		
5.	Other Receipts:		
	a. Loans (Money borrowed)	$	
	b. Other (Specify)		
	c. Total Other Receipts		
6.	Total Receipts		$ 2376,549
	CASH DISBURSEMENTS		
7.	Insurance and Annuity Premiums Paid to Insurance Carriers and Payments to Service Organizations (Including Prepaid Medical Plans)		$
8.	Benefits Provided Directly by the Trust or Separately Maintained Fund		1,178,659
9.	Payments to an Organization Maintained by the Plan for the Purpose of Providing Benefits to Participants (Attach latest operating statement of the Organization showing detail of administrative expenses, supplies, fees, etc.)		
10.	Payments or Contract Fees Paid to Independent Organizations or Individuals Providing Plan Benefits (Clinics, hospitals, doctors, etc.)		
11.	Administrative Expenses:		
	a. Salaries (Schedule 3)	$	
	b. Allowances, expenses, etc. (Schedule 3)		
	c. Taxes		
	d. Fees and commissions (Schedule 4)	10,029	
	e. Rent STATIONERY AND PRINTING	212	
	f. Insurance premiums		
	g. Fidelity bond premiums		
	h. Other administrative expenses (Specify) COMBINED PENSION FUNDS ACCOUNT (FOR ADMINISTRATION EXPENSES)	63,575	
	i. Total Administrative Expenses		73,816
12.	Purchase of Assets:		
	a. Investments: (Other than real estate)		
	(1) Purchased from parties-in-interest	$	
	(2) Purchased from others	1,125,502	
	b. Real Estate:		
	(1) Purchased from parties-in-interest		
	(2) Purchased from others		
	c. Total Purchase of Assets		1,125,502
13.	Loans (Money loaned)		
14.	Other Disbursements: (Specify)		
	a. CENTRAL LABOR REHABILITATION COUNCIL OF NY	$ 1,750	
	b. N.Y. ADMINISTRATION COUNCIL OF HWP PLANS	1,175	
	Total Other Disbursements		2,925
15.	Total Disbursements		$ 2,380,922

A-70

a. Indicate the total amount of fund assets (as valued on the Statement of Assets and Liabilities) which have been pledged as security for loans or encumbered in any other manner ..... $ NONE

b. Indicate total amount of liabilities (as included on the above prior year's Statement of Assets and Liabilities) liquidated or reduced, during the reporting year, without disbursement of cash. (See Instructions) $ NONE

b. Indicate total amount of assets (as valued on the Statement of Assets and Liabilities) acquired during the reporting year, in any manner other than by purchase. (See Instructions) ..... $ NONE

c. Indicate total amount of assets (as valued on the above prior year's Statement of Assets and Liabilities) which, during the reporting year, have been disposed of in any manner other than by sale. (See Instructions) ..... $ NONE

8. If any employer contributions are overdue for 6 months or longer, enter the total amount of such arrearages here to the extent that such amount is known or determinable ..... $ NONE

Indicate accounting basis by check. ☐ Cash ☒ Accrual

Plans on a cash basis must attach a statement of significant unrecorded assets and liabilities.

State basis of determining the amount at which assets listed in Part IV, Section A, Items 1 through 8, are carried and reported .....

COST

A-71

Part IV—Section C

Supporting Schedules for Specific Items Shown
on Section B—Statement of Receipts and Disbursements

File No.	WP- 47985

For Year Beginning MAY (Month) 1 (Day) 1971 (Year) and Ending APRIL (Month) 30, (Day) 1972 (Year)

If more space is required, attach additional sheets properly identified. Show total of additional listings in space provided.

SCHEDULE 1

Contributions Received from Employers
(Detail of total shown for Item 1a. Statement of Receipts and Disbursements)

Name and Location of Employer (See Instructions) (1)	Contributions Received During Reporting Period (2)
SCHEDULE ATTACHED	$
Subtotal from additional listing	$ 1,616,108
Total	To Item 1a. $ 1,616,108

SCHEDULE 2

Receipts From Sale of Assets
(Detail of total shown for Item 4c. Statement of Receipts and Disbursements)

Category of Assets Sold (1)	Cost (2)	Book Value (3)	Gross Sales Price		Amount Received (Net) (6)
			Cash (4)	Other (5)	
	$	$	$	$	$
Subtotal from additional listing	$	$	$	$	$
Total	$	$	$ To Item 4c.	$	$

SCHEDULE I

EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY
EMPLOYER CONTRIBUTIONS RECEIVED
YEAR ENDED JUNE 30, 1972

Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
1. Robert Abbey	3/31	101	$ 20,975.04
2. A.B.C. Lampshade	3/18	9	2,046.69
3. Ainsley Lamps Inc.	3/31	54	12,007.21
4. All Favorite Creations	4/5	10	3,524.53
5. Appt. By Doris Dassauer	3/31	1	483.66
6. Arista Lamp Co.			
7. Art Lighting Co.	2/1	18	4,982.60
8. Artemis Studios, Inc.	4/20	8	3,143.29
9. Art-N-Decor	3/25	14	3,013.05
10. Bay White Metal Castings Co.	10/1/71	2	284.65
	3/29	20	5,552.73
11. Benrose Lamp Co.			
12. Brite Lite Lamp Co.	2/24	6	1,669.60
13. Brite Metal Industries	3/31	52	12,945.48
14. Chatham Glass Co.	4/20	9	3,060.94
15. Colony Studios	3/25	11	1,839.95
	2/24	5	1,022.04
16. Continental Lamp & Shade Co.			
17. Crown Lamp Co.	2/18	8	1,504.00
18. Crystal Mart, Inc.	3/1	11	2,265.68
19. Meyer Daniel, Inc.	4/14	17	5,703.78
20. Denise Lamp & Shade	4/14	25	7,296.49
	4/8	10	2,292.73
21. Diane Studios Inc.			
22. Duke Lamp Shade Co.	3/25	58	11,437.80
23. Dumont Lamp Co. Inc.	4/14	24	5,675.03
24. Dunhill Mfg. & Distr. Co.	4/19	12	3,015.65
25. Eastern Art Studios	4/4	45	13,275.62
	2/25	6	2,123.93
26. Elco Lamp Shade Co.			
27. Empire Lamp & Shade Corp.	2/29	51	11,509.27
28. EverLite Co.	4/15	4	1,829.99
29. Fine Arts in Plastics	4/13	20	7,592.13
30. Florence Design	1/29	59	17,389.32
	1/21	2	580.21
31. G.F.C. Mfg. Co.			
32. General Ltg. Division (out of bus. 1/2/72)	4/14	10	2,902.88
33. Georgian Lighting Studios, Inc.	1/2		1,012.04
34. Gilben Lamp Co. Inc.	4/12	26	7,697.48
35. Gim Metal Products	1/26	18	2,634.83
	3/31	126	40,974.31
36. Goran Mfg. Co.			
37. H. Grabell & Sons	10/23	4	682.59
38. Philip J. Greenspan Inc.	4/1	7	2,204.37
39. Otto Guggenheim Lamp Products	4/5	44	12,401.36
40. Hensley & Kraw, Inc.	12/9/71	11	3,481.22
	3/15/71	8	1,636.05
(Continued)			

SCHEDULE I-2

EMPLOYEES RETIREMENT PLAN OF THE ILLUMINATING PRODUCTS INDUSTRY
EMPLOYER CONTRIBUTIONS RECEIVED
YEAR ENDED APRIL 30, 1972

	Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
41.	Hirsch-Fortune Co.	3/24	66	$ 24,691.80
42.	Jac-Mar Shade Co.	3/1	9	2,392.56
43.	Cecil Jaffee & Co. (out of bus. 4/30/72)	1/29/71		359.42
44.	Jo-Wallis Inc.	3/29	8	1,517.62
45.	Jubilee Lamp Shade Co.	4/7	18	4,796.64
46.	Kayeda Lamp Co.	4/20	29	7,223.20
47.	Kayton Lamp Co. (out of bus. 12/31/71)	12/30		458.03
48.	Key-O-Products	3/15	32	7,138.36
49.	Kenlin Mfg. Co. (out of bus. 1/23/72)	12/31		368.43
50.	Nathan Lagin Co.	4/19	24	7,104.47
51.	The Lande Co.	3/30	6	2,052.66
52.	Light Dimensions Ltd.	3/31	1	497.81
53.	Mario Mfg. Co.	3/30	45	12,177.51
54.	Marvel Imports Indust.	3/10	7	2,067.40
55.	Mayflower Art Inc.	2/19	4	1,811.16
56.	Melrose Lamp & Shade Co.	3/30	21	5,041.47
57.	Mercury Lamps Inc.	3/29	12	4,256.81
58.	Mobilite Corp. Inc.	3/28	112	24,864.53
59.	Nessen Lamp Co.	4/20	23	5,921.16
60.	N. Y. Lamp Corp.	4/5	9	2,170.97
61.	Nova Mfg. Co., Inc.	2/25	62	15,481.35
62.	Nu-Lite Lamp Corp.	3/31	9	2,365.18
63.	Nu-Process Plastics	2/19	95	23,374.37
64.	Edward P. Paul Co.	3/28	11	2,946.15
65.	Phoenix Co.	3/30	18	4,367.51
66.	The Pitlow Co.	3/30	26	5,891.51
67.	Plymouth Marlee	3/31	28	9,308.13
68.	Quoizel Inc.	4/14	35	11,395.10
69.	Raymor Mfg. Co.	4/11	29	10,922.85
70.	Regal Lamp & Shade Co.	4/4	26	7,179.42
71.	Reliance Lamp Co.	3/30	11	3,698.32
72.	Richlin Co.	3/1	6	1,374.43
73.	Roseart Novelty Co.	3/29	38	10,434.32
74.	Rose Lamp Co.	3/25/71	3	467.60
75.	Ruby Co.	4/13	6	1,162.61
76.	Charles Sadek Co.	4/20	10	2,402.45
77.	Safran & Glucksman	3/29	16	3,233.68
78.	Schor-Percraft Co.	2/19	56	14,012.87
79.	Louis J. Schwartz	3/31	8	1,714.96
80.	Sheridan Industries	4/21	59	13,898.72

(Continued)

EMPLOYERS RETIREMENT FUND OF THE [illegible] PRODUCTS INDUSTRY

EMPLOYER CONTRIBUTIONS RECEIVED

YEAR ENDED APRIL 30, 1972

SCHEDULE [illegible]

Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
81. State Polishing & Plating	1/25	18	$ 7,002.78
82. Supro-Lux Mfg. Co.	9/23/71	2	332.56
83. Tyndale Lamps (formerly Wilmar)	4/15	58	16,367.91
84. Vanessa Classics (merged with Vannessa Lamps)	2/5	50	11,374.45
85. Beth Weissman Co.	4/5	26	7,364.74
86. Wolgro Products			
87. Woodstock Workshop	10/2/71	14	
88. Abbey Glass (out of Bus. 6/30/71)	4/14	20	4,719.22
89. Bibi Cont'l	6/30		4,272.79
90. Columbia Silversmith	3/30		323.22
91. Creative Lamp	12/30	34	8,423.24
92. Diamond Lamp		3	1,233.50
93. Gray Glass	3/31		
94. F. J. Gray Glass	3/3	1	431.15
95. Greene Bros.	3/29	1	490.14
	3/29	8	3,015.07
96. H & R Sheet Mtl.	2/25	10	3,703.31
97. Heidi Lamp		6	774.83
98. I. W. Arms	3/21		
99. Kenroy Assoc.	2/24	19	4,597.97
100. Koch & Lowy	3/30	12	3,113.05
	3/24	76	27,859.60
101. Local #3	3/29	73	13,177.69
102. Mastercraft (out of bus. 1/21/72)		22	5,615.48
103. Modern Onyx	4/20		
104. Schacht Elec.	1/21	4	2,716.00
105. Serv. For The Home	4/5		338.70
	3/10	11	3,719.17
106. Norman Tauber Inc.	4/6	2	606.00
107. Wainland's Inc.		19	7,503.89
108. Weinstock Lamp	12/10		
109. Shade	1/14	7	1,663.35
110. Acme Lantern	3/30	2	538.00
	3/29	11	2,324.31
111. Astoria Welding & Repair	12/17	3	1,027.88
112. Atlite		12	4,356.03
113. L. Baldinger	4/6		
114. Beaux Arts	4/7	12	6,328.72
115. Belleville	1/26	100	29,500.97
	3/31	12	4,002.34
116. Bergen Art Metal	3/29	10	6,014.10
117. C.G.L. Industries Inc.		68	39,620.31
118. Chatham Spg. & Supg.	4/14		
119. Clinton Lighting	3/24	5	2,081.42
120. Columbia	3/21	9	3,149.34
	3/31	64	22,310.43
(Continued)	2/26	5	1,870.32
		3	1,346.37

DAVID S. FISCH & CO.
CERTIFIED PUBLIC ACCOUNT[illegible]

A-75

SCHEDULE I-4

EMPLOYEES RETIREMENT FUND OF THE LIGHTING PRODUCTS INDUSTRY
EMPLOYER CONTRIBUTIONS RECEIVED
YEAR ENDED APRIL 30, 1972

	Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
121.	Corona	3/29	388	$ 168,497.64
122.	Curtis Electro	3/3	47	20,760.26
123.	Diamond Lighting	2/26	33	14,029.42
124.	Edison Price	4/5	27	13,388.02
125.	E'Lite	3/20	44	- 11,335.90
126.	F.C.A.	12/31	3	2,341.22
127.	Frink Corp.	4/9	117	47,857.01
128.	Froelich Litecraft	3/24	9	2,038.97
129.	Georgian Lighting	4/22	3	1,451.80
130.	Gotham Lighting	4/7	117	50,142.70
131.	Imalcolite Company	4/9	58	21,834.95
132.	Horlbeck Metal Crafts	12/26	16	5,377.11
133.	Kenbert Lighting	2/16	89	46,026.17
134.	Kent Lighting	1/9	31	17,503.91
135.	Kliegl Brothers	4/9	107	52,341.83
136.	Century Strand (out.of bus. 6/30/71)	6/29		4,294.24
137.	Kliegl Reflector	4/9	5	1,914.99
138.	Landau	12/26	41	12,307.64
139.	Leader Lamp	4/9	7	3,698.38
140.	Legion Lighting	4/14	30	9,774.09
141.	Lightalarms	3/18	53	15,026.35
142.	Lyric	3/24	4	1,723.58
143.	McMillben	3/24	165	62,833.83
144.	Majestic Metal	4/9	37	13,584.10
145.	Melolite	12/31	4	1,650.16
146.	Metropolitan	4/7	9	3,989.03
147.	National Lighting	4/14	8	3,775.82
148.	Neo-Ray	3/19	121	53,803.88
149.	Nesle	4/14	12	6,035.97
150.	Peerless	3/31	5	2,466.48
151.	Phoenix Lighting	3/24	45	10,916.23
152.	Puritan	4/2	50	17,389.46
153.	Rambusch	2/27	26	13,583.53
154.	Raymor	4/11	2	1,118.76
155.	Joseph Richter	2/28	9	3,623.71
156.	Richter Metalcraft	4/3	79	29,698.30
157.	Rite Lite	4/14	5	2,180.19
158.	The Ruby Co.	4/13	2	1,127.45
159.	The Simes Co.	4/9	60	30,521.02
160.	Solux	4/8	20	8,339.09

(Continued

SCHEDULE

EMPLOYEES RETIREMENT FUND OF THE [illegible] INDUSTRY
EMPLOYER CONTRIBUTIONS RECEIVED
YEAR ENDED APRIL 30, 1972

	Name	Last Reporting Week	Number of Employees in Last Reporting Week	Total Receipts
161.	Spear	3/4	19	$ 9,683.2
162.	Street Lighting	3/27	22	5,692.6
163.	Sunlight Reflector	3/23	7	2,698.5
164.	Venini Ltd.	3/31	1	324.7
165.	Charles Wagner	4/11	11	6,582.8
166.	Weiss & Biheller	4/7	16	5,533.9
167.	Charles Winston	4/14	3	1,296.4
168.	Gruber Bros. (Completed payment of monies due)			2,055.6
169.	General Ltg. NL Corp. (out of bus. 1/2/72)	1/2		6,134.7
170.	Lehman's Ltg. (out of bus. 4/28/71)	4/22		91.52
171.	Stamford Metal (out of bus. 10/1/71)	10/1		2,847.16
	TOTAL			$1,616,108.40

RECONCILIATION OF CASH BASIS TO ACCRUAL BASIS

Contributions Received per Schedule (Cash Basis)		$1,616,108.40
Difference		.07
		$1,616,108.47
Less: Contributions Accrued 4/30/71		158,126.93
		$1,457,981.54
Add: Contributions Due From Employers 4/30/72		171,549.02
Contributions Received (Accrual Basis)		$1,629,530.56

DAVID S. FISCH & CO.
CERTIFIED PUBLIC ACCOUNTANTS

Part IV—Section D

Party-In-Interest Transactions

Name of Plan NONE

File No. [WP–

This section is to be completed, to the extent applicable, for all plans having any party-in-interest transactions of the types indicated in Tables 1, 2, and 3 hereunder.

The term "party-in-interest" means any administrator, officer, trustee, custodian, counsel, or employee of any employee welfare benefit plan or employee pension benefit plan, or a person providing benefit plan services to any such plan, or an employer any of whose employees are covered by such a plan or officer or employee or agent of such employer, or an officer or agent or employee of an employee organization having members covered by such plan.

Table 1. Investments

1. List here all investments held at year end in bonds or stocks of parties-in-interest, which are not listed or registered as described in footnote [1], and in mortgage loans or other property. (Include identity of each security, mortgage loan or property. Give name of party-in-interest and relationship.) [2] (1)	Cost (2)	Present Value (3)	Percentage of Total Funds (Assets) (4)
	$	$	
2. Provide, for the total investments in party-in-interest stocks, and bonds listed and traded or registered, as described in footnote [1] and not requiring identification, information required in columns (2), (3), and (4).	$	$	

[1] Any security which is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or is a security in an investment company registered under the Investment Company Act of 1940, or is a security of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

[2] If mortgage loans are included in column (1), the identification should also include location and description of property and name of mortgagor.

Table 2. Fees and Commissions

Provide the following information on fees and commissions incidental to the purchase or sale of all investments in securities or properties of parties-in-interest during the reporting year. This information need not be furnished with respect to the securities described in footnote [1].

Name and Address of Recipient (1)	Purpose For Which Paid (Identify securities and properties involved) (2)	Amount (3)
		$

[3] Under the Act the identity of all securities and details of brokerage fees and commissions incidental to the purchase and sale of such securities need not be furnished, if the security is listed and traded on an exchange subject to regulation by the Securities and Exchange Commission or is a security in an investment company registered under the Investment Company Act of 1940, or is a security of a public utility holding company registered under the Public Utility Holding Company Act of 1935.

Table 3. Loans

Provide the following information for all loans made by the fund to the employer or employee organization or any other party in interest. Information is to be furnished for all such loans other than those made to plan participants where such loans are available to all participants on a nondiscriminatory basis and made in accordance with specific provisions regarding loans to participants set forth in the plan description.

All loans made during year or outstanding at end of year to parties in interest, showing names and addresses of debtors, party-in-interest relationship to fund, dates made and maturity dates, interest rate, and any other terms and conditions of such loans. (1)	Face Amount of Loan (2)	Amount Outstanding at End of Year (3)	Type and Value of Collateral Held (4)
	$	$	$

A-78

SIGNATURE AND VERIFICATION

File No. WP- 47[illegible]

Name of Plan EMPLOYEE RETIREMENT FUND OF THE ILLUMINATING PRODUCTS INDUSTRY

18 U.S.C. § 1027 provides penalties up to $10,000 fine or five years imprisonment, or both, for any person who, in any document required by the Act to be published, or kept as part of the records of any covered plan, or certified to the administrator of any such plan, makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact required by the Act to be disclosed. In addition, any person who aids, abets, counsels, commands, induces or procures the commission of a violation of 18 U.S.C. § 1027, or who causes the commission of such a violation, is subject to the foregoing penalties even though he intentionally refrained from the direct act constituting a violation of 18 U.S.C. § 1027.

Records providing in sufficient detail the necessary basic information and data from which the report and other documents filed may be verified, explained or clarified, and checked for accuracy and completeness must be maintained and kept available for examination for at least five years after the date of filing the report. These records include vouchers, worksheets, receipts, and applicable resolutions.

This report shall be signed by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator. In the space provided. Where the administrator is a joint employer-union board or committee, at least one employer representative and one union representative must sign the report. The information contained in the report (including sections, schedules, and other documents attached) shall either be (1) sworn to by the administrator or individual(s) duly authorized to sign for and on behalf of the administrator before a notary public or other officer authorized to administer oaths, or (2) certified to by an independent certified or licensed public accountant, based upon a comprehensive audit conducted in accordance with accepted standards of auditing. If method (2) is used attach the accountant's certificate, which shall state facts indicating that the above requirements are met, and check this box:

☒ Certification described in (2) above is attached.

SIGNATURES

(Please observe instructions for completing this page.)

I/we, the administrator, or ..... of
(Title or Position)

..... which is the
(Employer or Employee Organization, Partnership, Board of Trustees, Committee, etc.)

administrator who is/are duly authorized to sign for and on behalf of said administrator, declare(s) under the applicable penalties of law that the information in this report (including the information contained in any accompanying schedules and attachments) has been examined by me/us and is to the best of my/our knowledge and belief, true, correct and complete.

SIGN HERE	TYPE OR PRINT NAME HERE	NAME OF COMPANY OR UNION AND POSITION THEREIN

VERIFICATION

State of .....
ss
County of .....

Signed and sworn to before me—

This ..... day of ....., 19.....
(Month)

.....
(Notary Public)

A-79

DAVID S. FISCH & CO.
CERTIFIED PUBLIC ACCOUNTANTS
366 MADISON AVENUE, NEW YORK, N.Y. 10017

TELEPHONE 687-2378

DAVID S. FISCH, C.P.A.
GEORGE HAIBLOOM, C.P.A.
LESTER B. PAROWER, C.P.A.
LEONARD I. FREEMAN, C.P.A.

9/13/72
(Date)

Re: EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY

Year FYE 4-30-72

We have examined the books and records of the above organization for the year ended APRIL 30, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary under the circumstances.

In our opinion the accompanying statements present fairly the Fund Balance (Surplus) at 4-30-72, and Cash Receipts and Disbursements for the year then ended, applied on a basis consistent with that of the preceding year.

DAVID S. FISCH & CO.
Certified Public Accountants

D-2

A-80

MARTIN E. SEGAL COMPANY
CONSULTANTS AND ACTUARIES
730 FIFTH AVENUE • NEW YORK, N.Y. 10019 • [illegible]

May 20, 1971

ATLANTA
BOSTON
CHICAGO
CLEVELAND
DALLAS
DENVER
HARTFORD
LOS ANGELES
PHOENIX
SAN FRANCISCO
SAN JUAN

Joint Retirement Committee
Employees' Retirement Fund of the
Illumination Products Industry
158-11 Jewel Avenue
Flushing, New York 11365

Gentlemen:

We are pleased to transmit to you our actuarial valuation and review for the year ended April 30, 1970. The review covers both the experience of the Pension Trust Fund of the Illumination Products Industry through that date and the merger with the Pension Trust Fund of the Portable Lamp and Shade Industry which took place on June 1, 1970.

Our report covers the following subjects:

I. BACKGROUND
II. RECALCULATED COST
III. CONTRIBUTIONS AND EXPENSES
IV. BENEFIT EXPERIENCE
V. INVESTMENT EXPERIENCE
VI. SUMMARY AND PROJECTED ACTUARIAL COST

The appendix defines certain pension terms; you may find it useful for reference in studying this report.

The statistical data upon which our calculations were based have been supplied to us by the Retirement Fund's staff, whose assistance we gratefully acknowledge.

We will be pleased to review this report with you and answer any questions you may have.

Yours sincerely,

MARTIN E. SEGAL COMPANY

EXHIBIT 2 [illegible]

EMPLOYEES' RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY

Actuarial Valuation and Review for the Year Ended April 30, 1970

Copyright © by
Martin E. Segal & Company, Inc.
1971

X. BACKGROUND

On June 1, 1970, the Pension Trust Fund of the Illumination Products Industry and the Pension Trust Fund of the Portable Lamp and Shade Industry merged. We have been asked to review the status of the merged fund and to determine its actuarial position. Our study is as of April 30, 1970, the end of the last fiscal year of the Illumination Products fund. We have used a financial statement of the Portable Lamp and Shade Industry fund as of May 31, 1970 as if it applied a month earlier so as to estimate the assets of the merged fund as of the end of the last completed fiscal year. The report will discuss the experience of the Illumination Products fund in comparison with that predicted by our last study as of April 30, 1965. It will then show projections for the coming year and future years for the merged fund.

Since some of the provisions of the Illumination Products fund were changed considerably since our last study, we outline them below:

1. Contributions

The employers contribute 5% of total weekly wages, of which 53% is allocated to the Pension Trust Fund in the Illumination Products Industry. Until the merger, 30% had been allocated in the Portable Lamp and Shade Industry. After the merger, the allocation was changed to 53%. The allocated contribution is used exclusively for support of the benefit plan; the expenses of administration being borne separately.

2. Standard pension

This pension, in the amount of $75 a month for life, is payable to an employee covered by the plan who retires after attaining age 60 and who has completed the service requirement applicable to his date of entry. For employees who entered the plan on or after July 1, 1959 the service requirement is 20 years. In addition, the employee must have 200 months

of employment by a contributing employer. Prior to July 1, 1967 the benefits were lower but the eligibility requirements were not as stringent. There was also a supplemental pension which is no longer a part of the plan.

3. Disability pension

A covered employee who becomes permanently incapacitated after attaining the service required for a standard pension is entitled to a disability pension of $75 per month.

For employees formerly covered by the Portable Lamp and Shade Industry fund the plan of the Illumination Products Industry was adopted as of the date of merger.

There are a number of pensioners who are still receiving $50 per month who retired prior to July 1, 1967. At a pension committee meeting on November 25, 1970 there was a resolution to increase these pensions to $60 per month should our study show that this could be done without endangering the actuarial soundness of the plan.

II. [illegible]

The Fund Office provided us with tabulations showing year of birth and year of employment in the Industry for each of the employees covered by the fund as of April 30, 1970. Separate tabulations were received for male and female employees within the Illumination Products and within the Portable Lamp and Shade groups.

Table 1A shows the census of employees by age and years of service for all male employees covered as of April 30, 1970 in the merged funds. Table 1B shows similar information for female employees. Table 1C shows similar information for male employees covered by the former Illumination Products Industry fund. The data for the females covered by the Illumination Products Industry fund is shown in Table 1D. Tables 1E and 1F, respectively, show the information on male and female employees formerly covered by the Portable Lamp and Shade Industry fund.

The group formerly covered by the Illumination Products Industry averaged 42½ years of age and had an average of 12 years of service. This compares with the group as of April 30, 1965 who had an average age of 44 years and 13 years of service as of that date. Thus the Illumination Products group itself is more favorable from an actuarial standpoint that it was 5 years ago. The group formerly covered by the Portable Lamp and Shade Industry fund is much younger and has many fewer years of service than the original Illumination Products group. The average age as of April 30, 1970 was 38 and the average service was 6 years. The 4,065 males covered by the combined group averaged 40½ years of age and 9½ years of service. The 967 females averaged 40 years of age and 6 years of service. Thus, the combined group of 5,032 employees averaged 40½ years of age and 9 years of service. This is considerably more favorable than the group covered by the Illumination Products fund as of April 30, 1965.

In our determination of the annual cost requirement we also took into account the liability for members on the pension rolls at year's end. As of April 30, 1970 there were 631 pensioners on the rolls in the combined group.

3/5 were from the original Illumination Products group and 2/5 from the former Portable Lamp and Shade Division. Based upon the data described and the actuarial assumptions set out fully in our actuarial valuation statement at the end of this report, we have determined the annual cost requirement for the year ended April 30, 1970. The total costs are shown, as well as the cost per active employee.

Cost item	Amount	Amount per active employee
	Recalculated	Recalculated
Normal cost	$296,100	$109
Scheduled payment on unfunded accrued liability*	102,600	38
Actuarial cost	398,700	147

*45-year amortization beginning May 1, 1965

The actuarial assumptions used in this calculation are the same used in our previous study with two exceptions. In our last review we used a 3% interest assumption. In projecting the cost for the future we recommended that 3½% be used. In view of the experience of the last 5 years, discussed in a later section of this report, we now feel that 4½% interest can be expected over the long term future from the fund's investments. We have used 4½% in our calculations. The other change we made involved the average age at which we predict that employees will retire. In our last study we used an average retirement age of 66, but recommended that 65 be used from May 1, 1965 on. We also mentioned that 64 might be more appropriate in the future years. In this calculation we have used 64 but in a later section of this report we also show the cost if age 63 is used.

Since employees are allowed to retire at age 60, and since increasing Social Security benefits and increasing benefits from this plan make retirement more attractive at younger ages, we feel that the trend toward earlier retirement which has already made itself evident will continue to a greater extent than has existed in the past.

Table 1A

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Total - Male

Age	Total	Years of service								
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 and over	Unknown
Total	4,065	1,920	428	532	409	454	116	187	5	14
Under 20	42	42	-	-	-	-	-	-	-	-
20 - 24	321	308	10	-	-	-	-	-	-	3
25 - 29	402	334	58	5	-	-	-	-	-	5
30 - 34	314	187	53	62	6	-	-	-	-	1
35 - 39	414	170	70	107	61	5	-	-	-	1
40 - 44	471	135	59	97	99	70	11	-	-	-
45 - 49	498	106	74	70	92	120	30	2	-	4
50 - 54	496	78	58	78	73	120	27	62	-	-
55 - 59	401	64	27	57	54	94	31	70	4	-
60 - 64	190	32	7	43	17	37	15	39	-	-
65 and over ...	60	8	7	13	7	8	2	14	1	-
Unknown	456	456	-	-	-	-	-	-	-	-

A-55

Illumination Products Industry, Local 3

Table 1B

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Total - Female

Age	Total	Years of service						
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34
Total	967	611	132	89	73	38	17	7
Under 20	23	23	-	-	-	-	-	-
20 - 24	87	87	-	-	-	-	-	-
25 - 29	69	56	13	-	-	-	-	-
30 - 34	72	55	17	-	-	-	-	-
35 - 39	110	68	19	14	9	-	-	-
40 - 44	137	81	20	18	12	6	-	-
45 - 49	117	55	22	16	12	8	4	-
50 - 54	110	51	20	14	14	9	2	-
55 - 59	96	21	13	19	18	11	10	3
60 - 64	30	5	6	8	5	3	1	1
65 and over ...	7	1	2	-	3	1	-	-
Unknown	109	108	-	-	-	-	-	1

58-A

Coordination Products Industry, Local 3

Table 1C

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Illumination Products - Male

Age	Total	Years of service								
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 and over	Unknown
Total	2,618	1,023	234	353	292	411	102	185	4	14
Under 20	13	13	-	-	-	-	-	-	-	
20 - 24	129	121	5	-	-	-	-	-	-	3
25 - 29	200	163	28	4	-	-	-	-	-	5
30 - 34	160	88	28	38	5	-	-	-	-	1
35 - 39	249	95	41	66	41	5	-	-	-	1
40 - 44	299	74	22	52	81	60	10	-	-	
45 - 49	358	55	44	52	58	118	25	2	-	4
50 - 54	380	34	37	60	56	106	25	62	-	-
55 - 59	308	30	21	44	33	82	25	69	4	-
60 - 64	147	15	4	28	13	34	15	38	-	
65 and over ...	42	2	4	9	5	6	2	14	-	-
Unknown	333	333	-	-	-	-	-	-	-	-

Illumination Products Industry, Local 3

Table 1D

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Illumination Products - Female

Age	Total	Years of service						
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34
Total	109	70	7	16	5	6	3	2
- 24	5	5	-	-	-	-	-	
- 29	3	3	-	-	-	-	-	
- 34	6	6	-	--	-	-	-	
- 39	7	5	2	-	-	-	-	
- 44	18	16	-	2	-	-	-	
- 49	17	6	5	2	-	2	2	
- 54	7	5	-	1	1	-	-	
- 59	20	2	-	9	4	2	1	2
- 64	4	-	-	2	-	2	-	
known	22	22	-	-	-	-	-	

Illumination Products Industry, Local 3

Table 1E

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Portable Lamp and Shade - Male

Age	Total	Years of service							
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34	35 and over
Total	1,447	897	194	179	117	43	14	2	1
Under 20	29	29	-	-	-	-	-	-	-
20 - 24	192	187	5	-	-	-	-	-	-
25 - 29	202	171	30	1	-	-	-	-	-
30 - 34	154	99	30	24	1	-	-	-	-
35 - 39	165	75	29	41	20	-	-	-	-
40 - 44	172	61	37	45	18	10	1	-	-
45 - 49	140	51	30	18	34	2	5	-	-
50 - 54	116	44	21	18	17	14	2	-	-
55 - 59	93	34	6	13	21	12	6	1	-
60 - 64	43	17	3	15	4	3	-	1	-
65 and over ..	18	6	3	4	2	2	-	-	1
Unknown	123	123	-	-	-	-	-	-	-

A-92

...mination Products Industry, Local 3

Table 1F

Census of Employees in Active Service on April 30, 1970,
by Age and by Years of Service

Portable Lamp and Shade - Female

Age	Total	Years of service						
		0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - [illegible]	[illegible] - 34
Total	858	541	125	73	68	32	14	5
[illegible]der 20	23	23	-	-	-	-	-	-
[illegible] - 24	82	82	-	-	-	-	-	-
[illegible] - 29	66	53	13	-	-	-	-	-
[illegible] - 34	66	49	17	-	-	-	-	-
[illegible] - 39	103	63	17	14	9	-	-	-
[illegible] - 44	119	65	20	16	12	6	-	-
[illegible] - 49	100	49	17	14	12	6	2	-
[illegible] - 54	103	46	20	13	13	9	3	-
[illegible] - 59	76	19	13	10	14	9	9	-
[illegible] - 64	26	5	6	6	5	1	1	-
[illegible] and over ...	7	1	2	-	3	1	-	-
Unknown	87	86	-	-	-	-	-	1

[illegible]nation Products Industry, Local 3

A-73

[illegible]

In the year ended April 30, 1970 contributions to the Pension Trust Fund of the Illumination Products Industry amounted to $537,400. The actuarial cost for the year, consisting of the normal cost and a payment on the unfunded accrued liability amounted to $398,700. The difference, at 4½% interest, comes to $141,600. This amount represents a gain to the fund for the year. The comparative figures, in total and per active employee is as follows:

	Amount	Amount per active employee
Net employer contributions	$537,400	$197
Actuarial cost (41-year amortization from May 1, 1969)	398,700	147

Table 2 shows a summary statement of the income and expenses for the year ended April 30, 1970 for the former Illumination Products fund only.

Table 3A shows the financial position of the former Illumination Products fund as of April 30, 1970. Table 3B shows similar information for the Portable Lamp and Shade fund as of May 31, 1970. The combined assets of the two funds are $7,959,500.

Table 4

Summary Statement of Income and Expense,
For Year Ended April 30, 1973

Illumination Products

Employer contributions	$537,424.59	
Less: Miscellaneous expenses	46.00	
Net employer contribution income		$537,378.59
Investment income:		
Interest	300,163.59	
Gain on sale of Federal Home Loan Bank obligation	761.72	
Finders fee refund	100.00	
Net investment income		$301,025.31
Total income available for benefit payments		$838,403.90
Benefit payments		270,250.00
Excess of income over expenses		$568,153.90

Illumination Products Industry, Local 3

Exhibit 24

Assets as of April 30, 1970

Illumination Products

Cash		$ 114,103.24
Due from Employees Retirement Fund benefit account		94,218.93
Accrued interest receivable		66,281.42
Investments		
Deposits in savings accounts	$ 705,000.00	
Certificates of deposit	145,000.00	
United States Government obligations	2,678,463.52	
Mortgages	233,344.03	
Franklin National Bank commercial paper	2,000,000.00	
Loan to Educational Trust Fund of Electrical Industry	46,666.67	5,808,474.22
Net assets		$6,083,082.81

Illumination Products Industry, Local 3

Assets as of May 31, 1970

Portable Lamp and Shade

Cash		$ 23,968.43
Accounts receivable from employer		12,569.20
Investments		
Deposits in savings accounts	$1,027,774.84	
Certificate of deposit	10,000.00	
United States Government obligations	533,305.60	
Mortgages	99,157.67	
Corporate bonds	169,674.00	1,839,912.11
Total assets		$1,876,449.74

Illumination Products Industry, Local 3

There were a total of 50 pension awards made during the year in the combined funds. Of these, 48 were standard retirements and 2 were for disability retirements. The awards are summarized in Table 4 by age on effective date. As of April 30, 1970 there were 631 pensioners on the rolls in the combined funds. Of these 581 were standard pensions and 50 were disability pensions. As indicated in our actuarial valuation statement, it is assumed that employees will retire, on the average, at age 64. Had this actuarial assumption worked out exactly in the Illumination Products fund, pension benefits totalling $267,800 would have been paid out during the year. The actual total paid was $270,200. The loss to the fund because more benefits were paid than expected comes to $2,400, including interest at 4½%.

On April 30, 1970 pensions were being paid out in the combined funds at the rate of $35,900 a month, or more than $430,800 a year.

The liability for the 631 pensioners on the rolls as of April 30, 1970 comes to $3,545,200. This is the amount of money estimated to be necessary to provide lifetime benefits for these pensioners, taking into account that 4½% interest will be earned on the ever-declining capital sum until the last dollar of pension benefits is paid out.

Fund assets of the combined funds totalled $7,959,500. The fund has not been growing quite as fast as has the liability for pensioners. That is because the benefit level has been increasing and the age at retirement has been decreasing. This is indicated in the table on the next page:

April 30:	Fund (in millions)	Pensioner liability (in millions)	Percentage of fund	
			Accounted for by pensioner liability	Remaining as reserve for non-retired members
1965 ...	$3,846,200	$1,559,200	40.5%	59.5%
1970	7,959,500	3,545,200	44.5	55.5

The fund, of course, has liabilities not only for presently retired employees but for active employees already eligible to retire on standard pensions. A summary of the comparison of the liabilities with fund assets is as follows:

Pensioners	$3,545,200
Active employees eligible for immediate retirement on standard pensions	2,121,300
Total	$5,666,500
Fund net assets	$7,959,500

Obviously, the fact that fund assets exceed the amount needed at this point for lifetime benefits to existing pensioners does not mean that the fund has a surplus, since the money will be necessary to provide pensions for employees becoming eligible for retirement in the future. As shown in our valuation statement, the liability for all employees is $11,864,800. This leaves $3,905,300 as the unfunded accrued liability. Future contributions to the plan in excess of minimum actuarial requirements will be used to amortize this liability.

Table 4

Pensions awarded in year ended April 30, 1970,
by type and by Age on Effective Date

Combined Funds

Age on effective date	Total	Type of pension	
		Standard	Disability
Total	50	48	2
55 - 59	2	-	2
60 - 64	22	22	-
65	8	8	-
66	4	4	-
67	3	3	-
68	3	3	-
69	3	3	-
70 - 74	4	4	-
75 - 79	1	1	-

Illumination Products Industry, Local 3

Pensions in Force on April 30, 1970,
by Type and by Age

Combined Funds

Age on April 30, 1970	Total	Type of pension	
		Standard	Disability
Total	631	581	50
40 - 44	3	-	3
45 - 49	3	-	3
50 - 54	9	-	9
55 - 59	14	-	14
60 - 64	61	49	12
65 - 69	172	167	5
70 - 74	173	169	4
75 - 79	116	116	-
80 - 84	57	57	-
85 - 89	20	20	-
90 - 94	3	3	-

Illumination Products Industry, Local 3

A-101

[illegible]

During this year ended April 30, 1971 the Illumination Products Fund's investment income amounted to $300,200. This represents an effective yield of 5.32% on the average value of the fund. The table below shows the yield for the years since 1962:

Year ended April 30:	Rate (%)
1962	4.08%
1963	4.28
1964	4.40
1965	4.46
1966	4.42
1967	4.58
1968	4.80
1969	4.89
1970	5.32

The actuarial assumption used is 4½%. The fund, therefore, had substantial gains in this area. In the year ended April 30, 1970 alone the gain was $46,500 over what would have been earned at 4½%.

In the Portable Lamp and Shade fund, the yield over the last several years have been as follows:

Year ended	Rate (%)
1966	4.61%
1967	4.58
1968	4.74
1969	4.90

[illegible] of the provisions of the merger [illegible].

The growth of the Retirement Fund of the Illumination Products Industry is detailed in Table 7A. Benefit payments and interest income continue to increase each year. In the year ended April 30, 1970, investment income exceeded benefit payments for the first time. The fund's net assets have been increasing in each of the recent years by about $500,000. Such increases are needed to provide reserves to cover the liability for present and future pensioners.

Table 7B shows the growth of the Portable Lamp and Shade fund. Here too, benefit payments and interest income have been increasing each year. In this fund the benefit payments are almost twice as high as the investment income.

Exhibit 3

Investment Portfolio

Type of security	Illumination Products		Portable Lamp and Shade	
	Amount as of April 30, 1970	Percentage distribution	Amount as of May 31, 1970	Percentage distribution
Bonds:				
Government obligations and securities	$2,678,463.52	46.1%	$ 533,305.60	29.0%
Corporate bonds	-	-	169,674.00	9.2
Total bonds	$2,678,463.52	46.1	$ 702,979.60	38.2
Certificate of Deposit	$ 145,000.00	2.5	$ 10,000.00	.5
Franklin National Bank Commercial paper	2,000,000.00	34.4	-	-
Loan to Educational Trust Fund of Electrical Industry ...	46,666.67	.8	-	-
Mortgages	233,344.03	4.0	99,157.67	5.4
Savings Accounts	705,000.00	12.1	1,027,774.84	55.9
Total portfolio	$5,808,474.22	100.0%	$1,839,912.11	100.0%

Note: Numbers may not add up to totals shown due to rounding.

Illumination Products Industry, Local 3

Progress of Fund through April 30, 1970

Illumination Products

Year ended April 30:	Net contributions	Net investment income	Benefit payments	Fund at end of year
1961	$327,491	$ 92,585	$168,865	$2,528,662
1962	405,695	107,744	165,645	2,876,457
1963	353,079	126,610	171,369	3,184,777
1964	349,140	143,840	171,566	3,506,191
1965	361,489	159,269	181,305	3,846,245
1966	367,764	173,793	187,773	4,200,030
1967	404,748	196,375	222,779	4,578,373
1968	451,583	224,439	239,035	5,015,361
1969	506,220	250,806	257,458	5,514,928
1970	537,424	300,979	270,250	6,083,083

Illumination Products Industry, Local 3

TABLE B

[illegible]

Portable Lamp and Shade

Year	Net contributions	Net investment income	Benefit payments	Fund at end of year
1966	$139,904	$69,285	$123,386	$1,583,104
1967	140,339	72,557	133,221	1,662,779
1968	149,801	78,905	144,972	1,746,513
1969	162,042	85,558	160,546	1,833,567

Illumination Products Industry, Local 3

VI. [illegible]

[illegible] gains resulted in [illegible] greater than the [illegible] assumed on the basis of the actuarial assumptions and funding schedule. These gains can be summarized as follows:

Net employer contributions greater than actuarial cost	$141,600*
Benefit payments greater than projected	(2,400)*
Investment income greater than projected	47,300
Total asset gains	$186,500

These gains served to reduce the unfunded accrued liability during the year. It was further reduced as a result of additional factors:

1. Part of the accrued liability was amortized in accordance with the schedule being followed.

2. Terminations from the active group exceeded the number expected.

The actuarial cost for the combined funds for the year beginning May 1, 1970 consists of 2 elements. The first is the normal cost, which roughly speaking represents the cost of credits earned during the year. The second is the payment necessary to amortize the unfunded accrued liability over the 40-year period remaining of the scheduled 45 years. The normal cost comes to $576,900. The amortization payment on the unfunded accrued liability is $208,000, for a total of $784,900.

* Including interest at the assumed rate of 4½%.

[illegible] per capita income [illegible] a sample of participations in the Illumination Products Industry Fund there [illegible] per capita. [illegible] whether or not a question to know whether or not [illegible] per capita [illegible] typical of employment patterns in the Industry and whether the fund [illegible] expect to continue to receive the same income each year in the Illumination Products area.

Obviously, since wage rates are lower in the Portable Lamp and Shade Industry it is expected that the total income to the fund on a per active employee basis will decline as a result of the merger. Since the contribution to this plan is based on a percentage of salary, employer contributions automatically increase as wage rates rise. Based on the ultimate wage rates bargained assuming a continuation of employment patterns and assuming the continuation of the relationship between Portable Lamp and Shade wages and Illumination Products Industry wages we can expect that the fund's income will be $183 per capita in the future.

We can expect that the cost of the plan will remain at $156 per active employee as long as our actuarial assumptions continue to be appropriate. There are two assumptions that are evidently not appropriate at this time. They are the ones pertaining to the average retirement age and to employee turnover. We would recommend that the retirement age assumption be reduced from age 64 to age 63 to allow for the continuing trend toward earlier retirement and the turnover rates be changed as indicated below:

Age	Old rate (%)	New rate (%)
22	5.4	7.9
27	4.5	7.7
32	3.3	7.0
37	2.0	6.0
42	1.0	4.9
47	.7	3.9
52	1.3	2.7
57	2.4	2.4
62	5.1	5.1

[illegible]

If the benefit to pensioners who are now on the rolls receiving $50 per month is raised to $60 per month, the actuarial cost will increase to $128 per active employee.

We are pleased to furnish you with the required actuarial valuation for the Treasury Department. It is attached as the last 2 pages of this report.

The fund began its current benefit year in a favorable actuarial position. It seems likely that if the employment opportunities hold up, its position will improve further by the end of the year. Alternatively, the Committee might consider increasing benefits at this time.

APPENDIX

[illegible]

The following list defines certain technical terms for the convenience of the reader.

Actuarial assumptions are the predictions on which the actuarial cost of the plan is calculated. They include:

(a) Interest rate - the rate of investment yield which the fund will earn over the long-term future.

(b) Mortality rates after retirement - the rates of death among pensioners; the number of years a pensioner can be expected to receive benefits is based on these rates.

(c) Retirement age - the average age at which employees are assumed to retire.

(d) Termination rates - the rates at which employees at various ages are expected to drop out of covered employment - on account of death, disability, and withdrawal - before entitlement to pension benefits.

Actuarial cost is the amount (net after expenses) calculated as necessary to support the pension plan on a basis that is actuarially sound. If this actuarial cost is met each year, the continuing plan will be able to build up reserves in accordance with the schedule decided on by the Trustees and to meet all of its obligations for paying benefits. The actuarial cost is made up of two elements: the normal cost and a payment on account of the unfunded liability. (These terms are explained below.) The actuarial cost, sometimes referred to as the actuarial requirement or the scheduled cost, is, of course, only an estimate. The final cost cannot be known until after the plan has terminated and the last dollar in benefits has been paid.

[illegible] is the level amount or percentage that, if paid [illegible] on an employee starts to add up [illegible] he retires, so as to accumulate the necessary funds for his lifetime pension.

- Accrued liability is the value of the benefits based on years of service already completed. This is an oversimplified definition; more precisely, it is the fund which, under the actuarial cost method used, would theoretically now be on hand if the pension plan had existed all along - through all the years of prior service - and had been meeting its normal costs.

Accrued liability for pensioners is the lump-sum value of lifetime benefits to existing pensioners. This lump sum takes account of life expectancies appropriate to the ages of the pensioners and of the interest which the lump sum will earn before it is entirely paid out in benefits. Together with the accrued liability for employees not yet retired, it makes up the total accrued liability.

Unfunded accrued liability is the amount by which the accrued liability of the pension fund exceeds the assets of the fund.

Payment on the unfunded accrued liability is one of the two elements that make up the actuarial cost. It may be simply an amount computed by applying the assumed interest rate to the unfunded accrued liability. Or it may, in addition, consist of an amount toward the amortization of that liability over a period of years.

Amortization of the unfunded accrued liability is the process of accumulation over a period of years of the assets to match the plan's accrued liability.

Funded ratio is the assets of the fund expressed as a percentage of the accrued liability. It is zero at the inception of the fund and 100% if and when the accrued liability is completely amortized.

[illegible] is the rate of earning of the [illegible] from [illegible] investments, including interest and dividends, computed as a percentage of the average value of the fund. Realized capital gains and losses may or may not be included in earnings.

Gain (loss) is the extent to which the experience of the pension fund was more (less) favorable than that projected on the basis of the actuarial assumptions. One part of the gain (loss) can represent a greater (smaller) accumulation of assets than expected; another part, a greater (smaller) reduction in the accrued liability than expected.

Net contributions are the contributions available for support of the benefits; that is, total contributions after deducting the cost of administration, professional fees, payroll audit fees, and retirement counseling.

MARTIN E. SEGAL COMPANY

ATLANTA
BOSTON
CHICAGO
CLEVELAND
DALLAS
DENVER
HARTFORD
LOS ANGELES
PHOENIX
SAN FRANCISCO
SAN JUAN

May 20, 1971

EMPLOYEES' RETIREMENT FUND OF THE
ILLUMINATION PRODUCTS INDUSTRY

Actuarial Valuation

This is to certify that we have prepared an actuarial valuation of the fund as of April 30, 1970.

Income to the fund from employer contributions during the year ended on that date (a) was sufficient, after expenses, to meet the normal cost and interest on the unfunded accrued liability as of the beginning of the year with respect to all covered employees and (b) did not exceed the tax deduction for the year as determined in accordance with Section 404 (a)1(A).

The cost factors as of the valuation date, indicated by the calculation for 5,032 active employees, and 631 pensioners on the rolls are as follows:

Normal cost		$ 576,900
Accrued liability - total		11,864,800
Active employees	$8,319,600	
Pensioners	3,545,200	
Fund		7,959,500
Unfunded accrued liability		3,905,300

The actuarial assumptions and funding method are as follows:

Mortality rates after retirement -- Group Annuity Table for 1951

Disability rates:

Age	Rate (%)
37	.1
42	.1
47	.2
52	.6
57	1.1
62	3.2

[illegible] RETIREMENT FUND OF [illegible]
[illegible] EMPLOYERS IN [illegible]

Actuarial Valuation ..... -2-

Termination rates before retirement, all causes:

Age	Rate (%)
22	5.4
27	4.5
32	3.3
37	2.0
42	1.0
47	.7
52	1.3
57	2.4
62	5.1

Retirement age -- 64, or completion of service requirement if later.
Interest rate -- 4½%.
Valuation of assets -- At cost.
Funding method -- Entry age normal cost

On the basis of this valuation we certify that

(a) the income reasonably expected from future employer contributions will be sufficient, after expenses, to meet the normal cost and interest on the unfunded accrued liability with respect to all covered employees; and

(b) the assets of the fund at the expiration of the term of the collective bargaining agreement on which contributions are based will be sufficient to match the cost of prospective pensions to persons then on the pension rolls.

Robert D. Krinsky, A.S.A.
Senior Vice President and Actuary

JOINT RETIREMENT COMMITTEE
of the
EMPLOYEES RETIREMENT FUND
of the
ILLUMINATION PRODUCTS INDUSTRY

158-11 Jewel Avenue, Flushing, N. Y. 11365
(212) 591-1100 Room 307

OFFICERS

ROWLAND J. SIMES
Chairman

SAM NEWBERG
Vice Chairman

KENNETH CEPPOS
Secretary

HARRY VAN ARSDALE JR.
Treasurer

COMMITTEE MEMBERS

Employer Representatives

Kenneth Ceppos
John H. Kliegl II
Edward R. Murphy
Jerry Schneit
Rowland J. Simes
Walter Weiss

Employer Alternates

Daniel Baldinger
Kenneth Gale
Edward Gluck
Robert C. Hamburger
Ren Petrilla

Union Representatives

Albert Bauer
Fred Landman
Sam Newberg
Louis Stein
Harry Van Arsdale Jr.
Thomas Van Arsdale

Union Alternate
Edward J. Cleary

HY GREENBLATT
Executive Secretary

PREAMBLE

The Employees Retirement Fund of the Illumination Products industry, created and established for the purpose of protecting the Employees included within the collective bargaining unit represented by Local Union No. 3 of the International Brotherhood of Electrical Workers, AFL-CIO, under collective bargaining agreements with Employers, and their wives and families in old age, disability, sickness, and of conferring death and such other benefits as may be mutually agreed upon from time to time between Employers and the Union to aid these Employees and their families and better their every day living conditions, shall be administered by the Joint Retirement Committee of the Employees Retirement Fund of the Illumination Products Industry as an integral part of the collective bargaining agreements for the illumination products industry.

WITNESSETH:

Whereas, Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, (hereinafter called the "Union") and the Manufacturers of Illumination Products, Inc., (hereinafter called the "Corporation") an Employer's trade association representing Employers in the illumination products industry, together with non Corporation Employers, (both hereinafter jointly called "Employers" or "Employer") have inaugurated an Employees Retirement Fund as a result of studies and have successfully operated and maintained the same since 1944; and

Whereas, the parties have by their experience become increasingly convinced of the necessity to continue and expand the benefits in order to provide security for Employees included within the bargaining unit represented by the Union under collective bargaining agreements with Employers, (hereinafter joint-

ly called "Employees" or "Employee") particularly those who have spent their lives in the illumination products industry; and

Whereas, it is necessary to provide pension benefits, supplementary to those which may be enjoyed under the Federal Insurance Contributions Act (Social Security Act), particularly with reference to total disability cases at any age and to those sixty (60) years of age and over;

NOW, THEREFORE, the parties hereto agree as follows:

1. The Employees Retirement Fund of the Illumination Products Industry, (hereinafter called the "Fund") and the benefits set forth shall be administered by the Joint Retirement Committee, (hereinafter called the "Committee").

2. a. The Committee shall consist of six (6) Employer representatives to be designated in the manner as provided by the By-Laws or appropriate resolutions of the Corporation, and six (6) Union representatives to be appointed by the Union. Any vacancy in the Employer members of the Committee, however, occurring, shall be filled in the manner provided by the By-Laws or other appropriate resolution of the Corporation, and any vacancy in the Union members of the Committee, however occurring, shall be filled by the Union.

b. The Committee shall select from among its members a Chairman, a Vice-Chairman, a Treasurer and a Secretary. Two of the foregoing offices shall at all times be occupied by Employer and two by Union members of the Committee, and all action of whatever kind of the officers must be taken jointly by two of those officers, of whom one shall be an Employer and the other a Union member of the Committee.

3. The Committee may adopt rules and regulations for the administration of the Fund and the conduct

of its affairs which are not inconsistent with any of the provisions of this Agreement.

4. Any act which this Agreement authorizes or requires the Committee to do may be done by nine (9) members of the Committee at any time acting hereunder, and the action of nine such members, as recorded from time to time by vote at a meeting shall constitute effective action for all purposes of the Committee. In the absence of the full Committee membership of either Employees or Employers those members of such group shall have power to and are hereby authorized to cast the vote for those absent so that at all time each group shall have six votes.

5. The determination in good faith by the Committee of any matter or question under this Agreement shall be final and conclusive.

6. The members of the Committee shall serve without compensation, but all reasonable expenses incurred by the Committee, including clerical and other assistance, shall be borne by the Fund.

7. No member of the Committee shall be liable for anything done or omitted to be done hereunder so long as he was acting in good faith and was free from fraud.

8. The Committee shall keep full and complete records of the administration of the Fund, which records shall be open to inspection at all reasonable hours by any contributing Employer or by the duly authorized officials of the Union or by the duly authorized representatives of any such Employer or authorized Union official. Annual audits shall be made by Certified Public Accountants, employed by the Committee, and a statement of the results of such audits shall be available for inspection by the Employers, the Union and the Employees at the principal office of the Committee.

9. In the event of a deadlock resulting from the failure of the Employer and Employee representatives of the Committee to agree on a matter relating to the administration of the Fund, then, and in that event the Committee shall appoint an impartial umpire to decide such dispute and upon the failure of the Committee to agree within a reasonable length of time upon the selection of an impartial umpire, either the Employer or Employee representatives of the Committee may petition the United States District Court for the Eastern District of New York for the appointment of such impartial umpire.

10. The Committee shall appoint an Executive Secretary. The Executive Secretary shall manage and operate the business office, attend all meetings of the Committee, keep minutes of the proceedings and carry on the correspondence. He shall conduct all business assigned to him by the Committee or by the Chairman. He shall, with the sanction of the Committee, or with the approval of the Chairman between meetings, be permitted to employ whatever help may be required for the proper administration of the Fund.

11. The moneys constituting the Fund shall be raised in a manner and amount as provided for as follows:

a. As of the first payroll week after July 1, 1956, each Employer, whether a member of the corporation or non-member who has become a party hereto, shall contribute an amount equal to five (5%) percent of the weekly wages of each employee within the bargaining unit of the collective bargaining agreements between the Employers and the Union.

b. The contributions referred to in "11 (a)" shall be paid over weekly to the "Fund." Reports shall be filed as required by the Committee.

c. The Employer shall at no time be required to contribute to the "Fund" any sum in excess of an amount equal to five (5%) percent of the total weekly wages as prescribed above.

12. All moneys received by the Committee shall be administered as Trust Funds for the benefits of those entitled to benefits hereunder. The Committee is empowered to invest and reinvest all funds of the Trusts created hereunder in such government securities, building loans, housing mortgages and other securities as they may select in their sole discretion, and to purchase, lease for any term of years, sell, exchange, convey or dispose of any property, whether real or personal, or any interests therein, all of which shall be at such prices and upon such terms and conditions as said Committee may deem advisable to carry out the purposes of the Funds, whether or not any of the foregoing are authorized by law for the investment of Trust Funds generally; to borrow moneys in such amounts and upon such terms and conditions as shall be deemed advisable by the Committee to carry out the purposes of the Funds and to pledge any securities, and to mortgage any property, real or personal, or any interests therein for the payment of any such loans; and to do all acts, whether or not expressly authorized herein, which the Committee may deem necessary or proper to effectuate the foregoing and for the protection of the property held hereunder.

13. Fifty-three (53%) percent of all moneys collected from the Employers as hereinabove provided, shall be deposited in a separate Fund to be known as the "Pension Trust Fund," which fund shall be used exclusively for the payment of Standard and Disability Pension Benefits, as herein provided. The remaining forty-seven (47%) percent of all such moneys collected shall be deposited in a separate fund to be used for the payment of other benefits under this Fund. The Corporation and the Union agree from time to time to increase or decrease the percentage payment of the Pension Trust Fund, as herein provided, such increase or decrease to be dependent upon the sufficiency of the Pension Trust Fund to meet all obligations thereunder, including the setting up of adequate reserves. In no event, however, shall the funds deposited in the Pension Trust Fund for the

payment of Pension or Disability Pension Benefits be used for any other purpose other than the payment of Pension or Disability Pension Benefits, as hereinafter provided.

14. The irreducible minimum of the Pension Fund is hereby fixed at Two Hundred Fifty Thousand ($250,000.00) Dollars and, notwithstanding any applications previously presented, no payments to any employees shall be made should the effect of the aggregate amount of such payments then due result in reducing the Pension Fund below said irreducible minimum of Two Hundred Fifty Thousand ($250,000.00) Dollars. The Union agrees that it will, and as often as may be necessary, contribute such amount or amounts to the Pension Fund, which, together with the amount in excess of Two Hundred Fifty Thousand ($250,000.00) Dollars then on hand, will enable the Committee to meet the then current payment due to employees, without reducing the Pension Fund below Two Hundred Fifty Thousand ($250,000.00) Dollars.

15. Any moneys contributed to the Fund by any Employer, by any Employee, or by the Union, shall, thereupon, belong to the Fund to be administered pursuant to the terms hereof, and no contributing Employer, Employee, or the Union shall have any right, title or interest in any sum so contributed. No Employee shall have any right or claim, legal or equitable hereunder, unless and until the Committee has approved his or her application, in which case the rights shall be limited to those awarded by the Committees, and shall be enforceable not by the individual Employee affected, but by the Union.

16. Failure on the part of any individual Employer to adhere to the provisions of this Agreement shall constitute a violation of the collective labor Agreement so far as such defaulting Employer is concerned, but neither the Corporation nor its other members, nor any other Employer not a member who has be-

come a party hereto, shall b financially responsible for such default, and no stoppage, strike or withdrawal of other benefits under the collective bargaining agreement or account of such default shall affect Employers who are not in default.

17. The Union agrees that on and after this date, it will not enter into any collective bargaining agreement with any Employer, unless one of the conditions of said Agreement is an undertaking by such Employer to become a party to this Agreement by signing a counterpart hereof.

18. There shall be ten (10) types of benefits, which shall be known as:

1. THE STANDARD PENSION BENEFIT
2. THE DISABILITY PENSION BENEFIT
3. THE HOSPITALIZATION AND/OR SURGICAL BENEFIT
4. THE DEATH PREMIUM BENEFIT
5. THE DUES PAYMENT BENEFIT
6. THE DENTAL BENEFIT
7. THE DIAGNOSTIC MEDICAL BENEFIT
8. THE OPTICAL BENEFIT
9. THE REST HOME BENEFIT
10. THE SERIOUS INJURY BENEFIT

1. THE STANDARD PENSION BENEFIT shall be made available to:

(a) Any Employee, male or female, who has attained the age of sixty (60) years, and (1) who prior to July 1, 1959 was employed or available for employment by one or more contributing Employers and (2) who at the time of filing his or her application for a Standard Pension has been continuously employed in the industry and meets the eligibility requirements that were in effect at the time he or she became a participant of the Fund.

(b) Any Employee, male or female, who has attained the age of sixty (60) years, is employed by

a manufacturer of illumination products and who has at the time of filing his or her application for benefits hereunder been employed for at least eleven (11) years in the illumination products industry immediately preceding the date of application and who during said minimum of eleven (11) years has been employed in the illumination products industry for not less than an aggregate of one hundred and ten (110) months during said period by one or more contributing Employers, shall be eligible to receive Pension benefits under this Agreement. Beginning with July 1, 1959, the above eligibility requirements shall be, annually, increased as follows:

For the period beginning July 1, 1960, applicants to be eligible for Pension benefits shall be required to have been employed in the illumination products industry for a minimum of twelve (12) years with a minimum aggregate employment by contributing Employers during such period of one hundred and twenty (120) months; with a similar annual increase of employment in the illumination products industry of one (1) year thereafter; and a similar annual increase of employment of ten (10) months for each year thereafter. Such increase in eligibility years of employment and total employment shall continue until an applicant has been employed in the illumination products industry for fifteen (15) years, with a minimum aggregate of employment by contributing Employers during said period of one hundred and fifty (150) months.

For the period beginning July 1, 1967, applicants to be eligible for Pension benefits shall be required to have been employed in the illumination products industry for a minimum of twenty (20) years with a minimum aggregate employment by a contributing Employer during such period of two hundred (200) months.

(c) Any Employee who by reason of an emergency confronting our Country, terminates his employment to enter the Armed Forces shall be credited for the

period of time he or she is in Service. In order to obtain such credit, the Employee must apply for re-employment with his former Employer, or in the industry, within the period specified by the Federal Statutes governing such cases.

(d) **The Standard Pension Benefit** to an Employee, whose Standard Pension application has been approved by the Committee, shall be as follows:

The sum of Fifty Dollars ($50.00) per month for those retired Employees whose application for the standard pension benefits were approved by the Committee on or before June 30, 1966.

For those retired Employees whose applications for standard pension benefits were approved by the Committee on or after July 1, 1966 the sum of Fifty Dollars ($50.00) per month for the period July 1, 1966 to June 30, 1967; and beginning on July 1, 1967 those Employees shall receive an increase in benefits bringing the total sum to Seventy-five Dollars ($75.00) per month.

The sum of Seventy-five Dollars ($75.00) per month for those retired Employees whose application for the standard pension benefits were approved by the Committee on and after July 1, 1967.

(d) No application for approval will be accepted by the Committee, dated more than fifty (50) days prior to the date of retirement. Payments will start, (if the application is approved by the Committee) the first day of the month following the date of application or date of termination of employment, whichever comes last.

(e) Should any pensioned Employee engage in the illumination products industry, or do any work in any capacity whatsoever in any other industry, all payments to him or her hereunder shall forthwith be discontinued.

A-120 1

2. THE DISABILITY PENSION BENEFIT shall be made available to:

(a) Any Employee, male or female, and who prior to July 1, 1959 was employed or available for employment by one or more contributing Employers, and (1) who at the time of filing his or her application for a Disability Pension has been continuously employed in the industry and meets the eligibility requirements that were in effect at the time he or she became a participant of the Fund.

(b) Any Employee, male or female, who is employed or was available for employment by a contributing Employer and who had at the date of the filing of his or her application for Disability benefits hereunder been employed or available for employment for at least eleven (11) years by any one or more of the contributing Employers and who immediately preceding the date of application has been employed by one or more contributing Employers for not less than a period of one hundred and ten (110) months during said period, and who is not eligible to the Standard Pension Benefit and who is permanently incapacitated or who is disabled to such an extent that he or she can no longer secure gainful employment in the illumination products industry, or any other line of business (the Committee to be the sole judge of the facts) shall be eligible to receive Disability Pension Benefits under this Agreement.

Beginning with July 1, 1959, the above eligibility requirements shall be, annually, increased as follows:

For the period beginning July 1, 1960, applicants to be eligible for Disability Pension Benefits shall be required to have been employed in the illumination products industry for a minimum of twelve (12) years with a minimum aggregate employment by contributing Employers during such period of one hundred and twenty (120) months; with a similar annual increase of employment in the illumination products industry of one (1) year thereafter; and a similar annual increase of employment of ten (10) months for each year thereafter. Such increase in eligibility years of employment and total employment shall continue until an applicant has been employed in the illumination products industry for fifteen (15) years, with a minimum aggregate of employment by contributing Employers during said period of one hundred and fifty (150) months.

For the period beginning July 1, 1967, applicants to be eligible for Disability Pension Benefits shall be required to have been employed in the illumination products industry for a minimum of twenty (20) years with a minimum aggregate employment by a contributing Employer during such period of two hundred (200) months.

(c) **The Disability Pension Benefit** to an Employee, whose disability pension application has been approved by the Committee, shall be as follows:

The sum of Fifty Dollars ($50.00) per month for those Employees whose applications for disability pension benefits were approved by the Committee on or before June 30, 1966.

For those Employees whose applications for the disability pension benefits were approved by the Committee on or after July 1, 1966 the sum of Fifty Dollars ($50.00) per month for the period July 1, 1966 to June 30, 1967; and beginning on July 1, 1967 those Employees will receive an increase in benefits bringing the total sum to Seventy-five Dollars ($75.00) per month.

The sum of Seventy-five Dollars ($75.00) per month for those Employees whose applications for disability pension benefits were approved by the Committee on and after July 1, 1967.

The above payments will continue during the existance of such disability.

3. THE HOSPITALIZATION AND/OR SURGICAL BENEFIT shall be made available to:

(a) Beginning with July 1, 1960, any Employee, male or female, not receiving Standard or Disability Pension Benefits, for whom one or more contributing Employers have paid at least six (6) months contributions within twelve (12) months preceding the date of such Employee's, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, admittance to a hospital, shall be eligible for hospitalization and/or surgical benefits covering such Employee, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, provided they have been duly recorded with the Committee.

Beginning July 1, 1969, in the event that an eligible Employee dies while the Spouse of such Employee or their children as described in the paragraph above are in a hospital for medical and/or surgical treatment then the entire amount of benefits payable shall be paid to the survivor or survivors as provided for herein under Section 29 entitled "Payments to Survivors".

(b) Married children of a participating Employee, regardless of age, shall not be eligible for hospitalization, maternity, and/or surgical benefits.

(c) Female Employees who become participants of the plan on and after July 1, 1960, for whom one or more contributing Employers have paid at least ten (10) months contribution shall be eligible for Maternity Benefits.

(d) Male Employees who become participants of the plan on and after July 1, 1960, for whom one or more contributing Employers have paid contributions for at least ten (10) months shall be eligible for Maternity Benefits for their wives.

(e) Beginning July 1, 1969, Employees of newly organized companies for whom Employers have paid contributions to this Fund for a period of at least four (4) weeks after such companies have been organized shall be entitled to hospitalization and/or surgical benefits for themselves, his or her spouse and their unmarried children from six (6) months of age up to their eighteenth (18th) birthday, provided that they have been duly recorded with the Committee.

(f) All Hospitalization, Surgical, and Maternity applications must be filed within thirty (30) days of admittance to a hospital and no later than six (6) months after date of discharge from a hospital.

(g) **The Hospitalization Benefit,** beginning with January 1, 1969, paid to an Employee, for such Employee, his or her spouse or children, whose application has been approved by the Committee, shall be Twenty-eight Dollars ($28.00) per day for the first sixty (60) days, and Fourteen Dollars ($14.00) per day thereafter, not to exceed a total of one hundred and twenty (120) days, for a maximum payment of Two Thousand Five Hundred and Twenty Dollars ($2,520.00) in any fiscal year, payable from the first day of the period during which such applicant is confined to a hospital.

In case of chronic illness of an Employee, such employee shall be entitled to receive each year the maximum payments herein for the period that such Employee is confined to a hospital.

In case of chronic illness of a spouse and/or children of an Employee, such spouse and/or children shall be entitled to receive the maximum payments provided for herein limited to a period of only two (2) years fiscal payments for a single chronic illness and only for such period that such spouse and/or children are confined to a hospital.

(h) **The Surgical Benefit,** beginning with July 1, 1958, shall be paid to an eligible Employee, for such

A 122

Employee, his or her spouse or unmarried children between the ages of six (6) months and eighteen (18) years in such amounts as are set forth in the Schedule of Allowances listed on pages 24 to 29. Surgical Benefits not listed on above pages will be paid in accordance with the Schedule of Allowances listed in the United Medical Service Blue Shield Booklet dated October 1956 under the provisions of the 2500/4000 service contract, except that the maximum allowance for a single surgery in any cases shall not exceed the sum of Two Hundred and Fifty ($250.00) Dollars.

Beginning July 1, 1967 and thereafter, in the event that an Employee, his or her spouse or children, whose application has been approved by the Committee, undergoes two or more surgical procedures, in different operative fields and through different operative incisions, in a single hospital stay, then surgical benefit payments shall be made as provided above covering the highest surgical procedure, and in addition fifty percent (50%) of the second surgical procedure.

(i) In the event that a husband, wife and or children are participants of the Fund and a claim for hospitalization or surgical benefits is made by either the husband, wife or children as participants, hospitalization or surgical benefits shall be paid to only such participant as provided above and no hospitalization or surgical benefits shall be paid to the other participants.

(j) No payment for any claim or benefits incurred after the termination of employment shall be made to any Employee, regardless of his or her eligibility for such payments, who voluntarily leaves the employ of a contributing Employer and takes a position outside of the industry. Employees who have been laid off due to lack of work in the shop of a contributing Employer shall be eligible for benefits for a period of six (6) months following such lay off, provided

they are available for employment and are registered with the Employment Department of the Joint Industry Board of the Illumination Products Industry.

4. THE DEATH PREMIUM BENEFIT shall be made available to:

(a) Any Employee, male or female, employed or available for employment by a contributing Employer and (1) who has a three thousand dollar ($3,000.00) graduating certificate issued by the Electrical Workers Benefit Society or (2) who has a two thousand dollars ($2,000.00) graduating certificate issued by the Electrical Workers Benefit Society and a one thousand dollar ($1,000.00) graduating certificate issued by the Electrical Workers Benefit Association, Washington, D. C.

(b) **The Death Premium Benefit** shall consist of (1) a total payment of two dollars and twenty five cents ($2.25) per month for each Employee, male or female, who is employed by a contributing Employer, and who holds only a three thousand ($3,000.00) dollar graduating certificate from the Electrical Workers Benefit Society or (2) a total payment of $2.70 per month for each Employee, male or female, who is employed by a contributing Employer, and who holds certificates from both the Electrical Workers Benefit Society and the Electrical Workers Benefit Association, Washington, D. C. This $2.70 monthly payments shall be allocated by applying $1.50 per month toward the premium payment of the $2,000.00 graduating certificate of the Electrical Workers Benefit Society and $1.20 per month toward the premium payment of the $1,000.00 graduating certificate of the Electrical Workers Benefit Association, Washington, D. C.

5. THE DUES PAYMENT BENEFIT shall be made available to:

Any Employee who receives Standard or Disability Pension Benefits, under which the Fund will pay the

A-123

dues of such Employee to Local Union No. 3, International Brotherhood of Electrical Workers membership fees, Over-age Fund, Electrical Workers Benefit Society, in such amounts due on such Employee's behalf.

6. **THE DENTAL BENEFIT** shall be made available to:

(a) Any Employee, male or female who at the time of applying for Dental care is employed (or available for employment) by a contributing Employer during the preceding twelve (12) months.

(b) **The Dental Benefit,** shall be given at the Dental Department of the Medical and Dental Plan of the Electrical Manufacturing and Supply Industries, located on the 7th floor of 130 East 25th Street, New York, N. Y., and shall consist of (1) Dental treatments of X-ray, cleaning of teeth, extraction and fillings, and (2) Dentures, Bridges, Crowns, etc. will be provided at the actual cost of the material.

7. **THE DIAGNOSTIC MEDICAL BENEFIT** shall be made available to:

(a) Any Employee, male or female (1) employed by a contributing Employer and (2) for whom one or more Employers have paid at least six (6) months of contributions.

(b) The Diagnostic Medical Benefit, consisting of a comprehensive physical examination, shall be given at the Medical Department of the Medical and Dental Plan of the Electrical Manufacturing and Supply Industries, located on the 6th floor of 130 East 25th Street, New York, N. Y. This benefit is only diagnostic and no treatment is proposed or included.

8. **THE OPTICAL BENEFIT:**

(a) This benefit shall be granted effective January 1, 1969, to any Employee, male or female, who is

employed by a contributing Employer, and for whom one or more Employers have paid at least six (6) months contributions immediately prior to application.

(b) **The Optical Benefit,** shall consist of one medical eye examination per fiscal year and if glasses are prescribed, one pair of standard glasses per fiscal year through the facilities provided by the Committee. For other than standard glasses such as bifocals, case hardened lenses, special lenses or frames, etc., the additional cost shall be borne by the Employee.

9. **THE REST HOME BENEFIT** shall be made available to:

(a) Any Employee, male or female, (1) who has been employed or available for employment with a contributing Employer for at least five (5) years immediately preceding date of application and, (2) during the five (5) years immediately preceding the date of such application been employed by a contributing Employer for not less than fifty (50) months. In cases of hardship or extraordinary circumstances, the Committee may (in its sole discretion) waive the above limitations. In no case, however, shall anyone be admitted to the Rest Home who has not been employed or available for employment with a contributing Employer for at least two (2) years immediately preceding the date of application and employed at least twenty (20) months during these two (2) years immediately preceding date of application.

(b) When an eligible Employee requires convalescence after an illness in order to recuperate and the Committee in its judgment determines that such convalescence is necessary to rehabilitate such Employee, such Employee shall be admitted to the Bayberry Rest Home without payment. Should more than two (2) weeks' convalescence stay at the Rest Home be required, the Committee must approve the extended period.

A 124

10. THE SERIOUS INJURY BENEFIT shall be made available to:

(a) All employees who are injured while working for a contributing Employer of this Fund.

(b) When an Employee is seriously injured while employed in the plant or on an assignment at the direction of a contributing Employer and directly enters a hospital for that injury, he or she shall receive a full days wages for each day of hospital confinement for a period not to exceed ten (10) weeks. The wages paid shall be based on and are not to exceed the Employee's standard work week as defined in the Employer's collective bargaining agreement with the Union.

19. **Eligibility of Business Representatives of Local 3, International Brotherhood of Electrical Workers:** Those Business Representatives, who are employed by the Union servicing factories of contributing Employers of this Fund shall be eligible to be participants of this Fund and receive the benefits provided thereunder, provided a 5% contribution on their salary is paid by Local #3 in the same manner as that of any contributing Employer.

20. **Application Forms:**

(a) The Committee shall adopt application forms and every applicant shall be required to answer accurately and completely all questions on such forms. The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, the Corporation or the Employers.

(b) The Standard Pension application shall contain a clause to the effect that the applicant desires to retire from all work and shall bind the applicant to discontinue work prior to the first day of the month of his or her first benefit payment hereunder.

(c) The Disability Pension application shall contain a clause stating that the Committee has the power to prescribe a medical and/or physical examination (the cost to be borne by the Fund), and that the applicant will agree to such an examination before his application will be considered by the Committee.

(d) The applicant for Hospitalization and/or Surgical Benefits shall be required to furnish a certificate from a hospital showing the dates of admission and discharge therefrom and/or a certificate from a doctor showing the surgical procedure and date performed. In the case of a spouse the applicant must also furnish a marriage certificate. In the case of children the applicant must also furnish a birth certificate.

21. **Union and Employers Supply Data:** The Union and the Employers for themselves, their officers and respective committees and members, shall supply all available data to the Committee concerning employment conditions in the industry, and among other things the age, health and employment record of Employees about to become eligible, and those who are eligible to apply for benefits hereunder.

22. **Non-Eligibility Because of Past Condition:** No Employee, male or female, his or her spouse, his or her children from six (6) months of age up to their eighteenth (18th) birthday, who would otherwise be eligible to either Disability Pension Benefits, Hospitalization Benefits or Surgical Benefits as provided for, respectively, in Section 18 hereof, shall be eligible to any such benefits where the disability, illness or surgery performed is the result of any condition which existed prior to the time that the person or those claiming through such person, became eligible.

23. **Deferred Benefit Payments Because of Mental Illness:** No benefits provided for under this Fund shall be payable to or for the account of any Employee, for the period of time that such Employee,

A125

his or her spouse or children, for whom benefits are sought, is confined to a mental institution. However, commencing with July 1, 1967 and thereafter, if and when an Employee, his or her spouse or children, who have been confined to a mental institution, is released, the Committee may in its discretion pay hospitalization benefits covering an Employee, not to exceed a total of two hundred forty (240) days in two (2) successive fiscal years, after which an Employee must again work for a contributing Employer to re-establish his eligibility; and if and when an Employee's spouse or children who have been confined in a mental institution are released, the Committee may in its discretion pay hospitalization benefits covering such spouse or children, not to exceed one hundred twenty (120) days in any fiscal year with a maximum total benefit not to exceed two hundred forty (240) days.

24. **Non-Assignment or Non-Encumbrance of Benefits:** To the end of making it impossible for Participants or Pensioners covered by this Fund, improvidently to imperil the provisions made for their welfare and support, by directly or indirectly anticipating, pledging or disposing of their benefit payments hereunder, it is hereby expressly stipulated that no Participant or Pensioner hereunder shall have the right to assign, alienate, transfer, sell, hypothecate, mortgage, encumber, pledge, commute or anticipate any benefit payments, and that such payments shall not in any way be subject to any legal process to levy execution upon or attachment proceedings against the same for the payment of any claim against a Participant or Pensioner. Nor shall such payment be subject to the jurisdiction of any Bankruptcy Court or Insolvency proceedings by operation of law, or otherwise, and any such assignments, etc., shall be void and of no effect whatsoever.

25. **Endorsed Checks:** All checks must be endorsed personally by the Employee and correspond with the signature on the application for Pension,

Hospitalization, Surgical, Serious Injury or Disability. If the payee becomes incapacitated and cannot endorse the checks to correspond with his or her original signature, a letter of explanation should be made to the Committee. In any case of signature discrepancies, the Committee shall have the right to withhold sending further checks until it has an opportunity to investigate and ascertain that no wrongful deed has been committed.

26. **Hardship Cases:** The Committee is also empowered to grant benefits hereunder in exceptional cases and to avoid hardship to Employees who may not be completely eligible within the requirements hereinbefore imposed. This power shall be exercised in a uniform and non-discriminatory manner.

27. **Recission of Benefits:** The Committee may for grounds deemed adequate by it rescind its approval of any application, either before or after benefit payments have been made, and immediately upon such recission all benefit payments to the Employee affected shall be discontinued and such Employee shall have no right or claim of any kind hereunder against the Committee, the Union, the Corporation, or the Employers. This power shall be exercised in a uniform and non-discriminatory manner.

28. **Payments Terminate on Death:** As long as this Agreement is in effect, all benefits provided therein shall be paid in accordance with its provisions to Employees whose applications have been approved by the Committee, but all payments shall automatically terminate on the death of an Employee, except as otherwise provided for in the Fund.

29. **Payment to Survivors:** All benefits accrued during the life of an Employee but actually due and payable after such Employee's death shall be paid to the following persons, if then living, in the following order of priority:

(a) To surviving spouse;

A-126

(b) Children of the Employee;
(c) Father of the Employee;
(d) Mother of the Employee;
(e) Brothers and Sisters of the Employee;
(f) Personal representative of the Employee's Estate.

Where, under this section, benefits become payable to a person under twenty-one (21) years of age, the amount may be paid to such person—without requiring the appointment of a guardian—by paying such amount to anyone over the age of twenty-one (21) years, who submits satisfactory proof that he or she is supporting and maintaining such person, and gives assurance to the Committee in satisfactory form that the monies so paid over will be used for such purposes.

AMENDMENT AND TERMINATION

30. The parties hereto may at any time and from time to time modify this Agreement in any of its terms, or terminate the same in its entirety, and neither the making of this Agreement nor the creation of any Fund pursuant thereto shall be considered as giving any Employee or any person whatsoever any legal or equitable right against the Union, the Corporation, any Employer, the Committee and/or any Fund, except such right as is specifically provided for herein, or given by action of the Committee duly taken in accordance with the provisions hereof.

31. a. The Pension Trust Fund and the Trust Fund to be used for the payment of other benefits under this Fund may be terminated when there is no longer in force any agreement between the Employers and the Union requiring Employer contributions to this Fund for the purposes hereinabove provided. This Fund may, likewise, be terminated at any time by the unanimous vote of all members of the Committee with the consent of the Corporation and the Union.

b. In the event of a termination of the Pension Trust Fund the Committee shall apply the funds to pay or provide for the payment of any and all obligations of said Trust and distribute and apply any remaining surplus in such manner as will, in their opinion, best effectuate the purposes of said Trust; provided, however, that no part of the corpus or income of said Trust shall be used for or diverted to purposes other than the exclusive benefit of retired Employees and Employees eligible for retirement or the administrative expenses of said Pension Trust Fund or for other payments in accordance with the provisions of such Fund.

c. Upon termination of the Fund, the Committee shall forthwith notify the Union, the Corporation and each Employer and all other necessary parties, and shall continue as members of the Committee for the purpose of winding up the affairs of the Trust.

32. Notwithstanding anything contined in this Agreement, it shall be impossible at any time prior to the satisfaction of all liabilities with respect to Employees entitled to benefits hereunder, for any part of the corpus or income of the trusts hereby created to be used for or diverted to purposes other than exclusive benefit of such Employees.

33. In the event that this Agreement terminates by operation of any provision hereof, or by mutual consent of the parties, then (a) no one affected thereby shall have any right or recourse of any kind against the Fund, the Union, the Corporation, or the Employers, and (b) the funds then on hand shall be applied as prescribed in Section 32 hereof.

34. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and the said counterparts shall constitute but one and the same instrument and may be sufficiently evidenced by any one counterpart.

A 127

SURGICAL PAYMENTS

Abdomen	*Allowance*
Appendectomy	$125.00
Gall bladder removal	150.00
Gall bladder drainage	125.00
Large bowel resection	250.00
Other cutting into abdominal cavity for diagnosis or treatment, unless otherwise specified	125.00
Abscess	
Drainage of large subcutaneous abscess	15.00
Carbuncle, excision of	25.00
Deep breast abscess, boils excepted	25.00
Amputations	
Thigh through hip joint	125.00
Arm through humerus	125.00
Foot below ankle	120.00
Upper arm through humerus	125.00
Forearm through radius and ulna	100.00
Hand at wrist	60.00
Finger or toe, one joint or phalanx	40.00
Coccyx	50.00
Breast	
Radical amputation, single	200.00
Radical amputation, bilateral	250.00
Tumor, non-cancerous	50.00
Chest	
Thoracoplasty: First operation	160.00
Each subsequent operation	50.00
Cutting into thoracic cavity for diagnosis or treatment	60.00
Pneumothorax, induced: First induction	25.00
Each refill (maximum 5 refills)	10.00
Cutting into trachea	75.00

	Allowance
Bronchoscopy, diagnostic	60.00
with biopsy	60.00
with removal of foreign body	100.00
subsequent bronchoscopy	25.00
Dislocation, Reduction of	
Shoulder, closed	40.00
Shoulder, open	175.00
Heel, closed	60.00
Heel, open	100.00
Hip joint, closed	100.00
Hip joint, open	150.00
Knee, closed	100.00
Knee, open	150.00
Knee cap, closed	40.00
Knee cap, open	100.00
Ankle, closed	40.00
Ankle, open	100.00
Elbow, closed	50.00
Elbow, open	100.00
Collar bone; wrist, closed	50.00
Collar bone; wrist, open	100.00
Jaw	15.00
Finger, closed	10.00
Finger, open	50.00
Toe	10.00
Ear, Nose or Throat	
Mastoidectomy: Simple	150.00
Radical	200.00
Submucous resection of nasal septum with correction of nasal deformity	100.00
Tonsillectomy and adenoidectomy:	
under age 12	45.00
age 12 or over	65.00
Sinus Operations	
Frontal, intranasal, simple	75.00
Frontal, external	110.00
Puncture for drainage or irrigation	10.00

A-128

A-127

Excision or Fixation by Cutting	Allowance
Hip joint	150.00
Joints of: Shoulder; elbow; knee; ankle	125.00
Removal of semilunar cartilage of knee	125.00
Eye	
Cataract extraction after preliminary iridectomy, unilateral	125.00
Combined cataract extraction, unilateral	175.00
Operation for detached retina	150.00
Needling of cataract	85.00
Removal of tear duct	120.00
Removal of intra-ocular or intra-orbital foreign body	SC
Removal of eyeball; cutting of extrinsic eye muscles	125.00
Iridectomy, complete	100.00
Fractures	
Fractures Not Reduced by Open Operation:	
Thigh bone	175.00
Shafts of both bones of legs	125.00
Spine, one or more vertebral bodies; upper arm; shafts of both bones of forearm; shaft of large bone of leg (tibia); ankle (bimalleolar); knee	100.00
Malleolus of large or small bone of leg (tibia or fibula); Pelvis—more than one bone; heel bone	75.00
Pelvis—one bone	70.00
Shaft of forearm (radius) and at wrist joint (Colles); carpal bones of hand (one or more); knee cap	65.00
Small bone of leg (fibula)	60.00
Sacrum; elbow (condyle only); shaft of one bone of forearm (ulna); tarsal bones of foot (one or more)	50.00

	Allowance
Shoulder blade; metacarpal bones of hand (one or more)	45.00
Collar bone; metatarsal bones of foot (one or more)	40.00
Fingers or toes (two or more in same hand or foot)	35.00
Finger or great toe	30.00
One toe other than great toe	20.00
Incomplete (Greenstick or Chip) Fractures: Decrease by 33-1/3% the above payments for "Fractures Not Reduced by Open Operation."	
Fractures Reduced by Open Operation:	
Skull:	
Open operation within durameter	225.00
Open operation not within durameter	150.00
Elbow (including radius, ulna and humerus)	175.00
Forearm at wrist (Colles)	125.00
Large bone of leg (Tibia)	150.00
Ankle (bimalleolar)	135.00
Carpal bones of hand (one or more)	150.00
Metacarpal bones of hand (one or more)	80.00
Metatarsal bones of foot (one or more)	80.00
Tarsal bones of foot (one or more)	100.00
Genito-Urinary Tract	
Removal of entire kidney	200.00
Removal of entire prostate	200.00
Complete removal of uterus and both tubes and both ovaries	200.00
Other cutting operations with abdominal approach for removal of, or on, uterus or its appendages	125.00
Removal of uterine fibroid tumors, polypoid growth excepted	125.00
Cutting into bladder and removal of tumors	150.00
Other cutting into bladder	125.00
Cutting into kidney, including removal of stones or tumors	150.00

	Allowance
Fixation of kidney (nephropexy)	150.00
Cutting into ureter	150.00
Cystoscopy, diagnostic	
initial	25.00
subsequent	15.00
Varicocele, excision of	60.00
Hydrocele, excision of (tunica vaginalis)	100.00
Orchidectomy (unilateral)	90.00
Epididymectomy (unilateral)	75.00
Dilation and curettage (non-Puerperal)	40.00
Circumcision:	
under age 12	20.00
age 12 or over	35.00
Goitor	
Thyroidectomy.	
subtotal or partial (unilateral)	125.00
total or complete	175.00
Hernia, Cutting Operation	
Single hernia (inguinal)	125.00
More than one hernia (inguinal)	175.00
Rectum	
Hemorrhoidectomy: internal and external	100.00
Hemorrhoidectomy, external only	25.00
Fistula, incision of	75.00
Anoplasty, adult	120.00
Prolapse of rectum, complete procedure with abdominal approach	150.00
Tendons, Suture of	
Single tendon	50.00
Each additional tendon (maximum of 6)	10.00
Transfusion or Infusions, when supplemental to Surgical or Maternity Care, exclusive of cost of blood, plasma or serum	
Blood transfusion	50.00

	Allowance
Tumors, Cysts, etc., Removal of	
Non-malignant skin tumor or submucous lipoma: Single	15.00
Multiple	25.00
Malignant tumors of face, lip or skin, wide excision of	SC
Pilonidal sinus or cyst	100.00
Varicose Veins	
Ligation and division of long saphenous vein at saphenofemoral junction with or without retrograde injection or distal interruptions:	
Unilateral	75.00
Bilateral	110.00

SC—Special consideration

MATERNITY BENEFITS

Obstetric delivery	75.00
Cesarean section	125.00
Abdominal operation for ectopic pregnancy	125.00
Miscarriage (abortion), including dilation and curettage, if any:	
Up to beginning 5th month	50.00
After beginning of 5th month	75.00

A-130

A-131

A-130

CONTRIBUTING EMPLOYERS
AS OF MAY 1, 1970

Abbey Glass Corp.
Acme Lanterns, Inc.
I. Albert Co. of N.Y., Inc.
Arpag Metal Products Corp.
Astoria Welding & Repair Corp.
Atlite Lighting Equipment, Inc.
Louis Baldinger & Sons, Inc.
Beaux Arts Lighting Co., Inc.
Bergen Art Metal Works, Inc.
Bibi Continental Corp.
Century Strand, Inc.
Chandelier Restorers, Inc.
Chatham Metal Spinning & Stamping Corp.
Clinton Lighting Co., Inc.
Columbia Lighting Fixture Co.
Corona Corp.
Creative Lamp Co., Inc.
Curtis-Electro New York, Inc.
Diamond Lamp Studio, Inc.
Diamond Lighting Fixture Corp.
Edison Price, Inc.
E-Lite Co., Inc.
Fluorescent Co. of America
The Frink Corp.
Froelich Litecraft, Inc.
General Lighting Div. of N L Corp.
Georgian Lighting Studios, Inc.
Gotham Lighting Corp.
Grand Metal
F. J. Gray & Co., Inc.
Gray Glass Co.
Greene Brothers, Inc.
Gruber Brothers, Inc.
H & R Sheet Metal Mfg. Corp.
Halcolite Co., Inc.
Heidi Lamp, Inc.
Horlbeck Metal Crafts, Inc.
I. W. Arm Works, Inc.
Kenbert Lighting Industries, Inc.
Kenroy Associates, Inc.
Kent Lighting Corp.
Kliegl Brothers Universal Electric Stage Lighting Co., Inc.
Kliegl Reflector Corp.
Koch & Lowy, Inc.
Landau Metal Products Corp.
Leader Lamp Corp.
Legion Lighting Co., Inc.
Lehman's Lighting, Inc.
Lightalarms Electronics Corp.
Lyric Lighting, Ltd.
Majestic Metal Spinning & Stamping Co., Inc.
George Marsh Custom Lamp Mounting, Inc.
McPhilben Lighting Division, Emerson Electric Co.
Melolite Industries, Ltd.
Metropolitan Lighting Fixture Co., Inc.
Modern by Mastercraft, Inc.
Modern Onyx Mfg. Co., Inc.
National Lighting Supply Co., Inc.
Neo-Ray Products, Inc.
Nesle, Inc.
Peerless Electric Merchandise Co.
Phoenix Lighting Fixture Co., Inc.
Puritan Lighting Fixture Co., Inc.
Rambusch Decorating Co.
Raymor Mfg. Div., Inc.
Joseph Richter, Inc.
Richter Metal Craft Corp.
Rite Lighting Fixture Corp.
The Ruby Lighting Corp.
Schacht Electrical Supply Corp.
Services for the Home, Inc.
The Simes Co., Inc.
Solux Corp.
Spear Lighting Fixtures, Inc.
Stamford Metal Specialty Co., Inc.
Street Lighting Equipment Corp.
Sunlight Reflector Corp.
Norman Tauber, Inc.
Venini, Ltd.
Charles Wagner Mfg. Co., Inc.
Wainland's, Inc.
Weinstock Lamp Co., Inc.
Weiss & Biheller Merchandise Corp.
Charles J. Winston & Co., Inc.

INSTRUCTIONS

WHEN APPLYING FOR BENEFITS

WRITE — Do not telephone

Give your name

Your home address

Your union card number

Where you are employed

Who the application is for

(Employee, Spouse or Child)

All Hospitalization and Surgical Claims must be filed no later than six (6) months after date of discharge from hospital.

Write to:

EMPLOYEES RETIREMENT FUND
of the
ILLUMINATION PRODUCTS INDUSTRY

150-11 Jewel Avenue
Flushing, N. Y. 11365
Room 307

A-132

A-132

CERS
AND J. SIMES
irman
TEITELBAUM
Vice Chairman
EN KANYOOSKY
Vice Chairman
VAN ARSDALE JR.
surer
TH CEPPOS
etary
BAL IMBRO
. Secretary
EENBLATT
utive Secretary
MITTEE
Representatives
TH CEPPOS
GRAFSTEIN
RD GOLUB
BAL IMBRO
H. KLIEGL II
D R. MURPHY
CHNEIT
ND J. SIMES
TEITELBAUM
R WEISS
Alternates
BALDINGER
TH GALE
D GLUCK
C. HAMBURGER
N HILFER
GER
TRILLA
WEISSMAN
resentatives
BAUER
RMAN
BONO
N KANYOOSKY
RNKA
CIACCA
TEIN
VAN ARSDALE
VAN ARSDALE JR.
ZAPPATA
rnates
J. CLEARY
SCOTLAND

EMPLOYEES RETIREMENT FUND
OF THE
ILLUMINATION PRODUCTS INDUSTRY
153-11 JEWEL AVENUE FLUSHING, N. Y. 11365
(212) 591-1103 ROOM 307

April 5, 1973

David S. Preminger, Esq.
Brooklyn Legal Service Corp. B
South Brooklyn Branch
152 Court Street
Brooklyn, New York 11201

Re: Juan Sanchez Lugo, BAF 891060
185 Nevins Street, Brooklyn, N.Y.

Dear Mr. Preminger:

In answer to your letter of March 15, 1973 we enclose herewith, the following:

1) Copy of Trust Agreement, containing provisions of the Plan, along with excerpts of minutes of Trustees' meetings containing amendments to the Plan

2) Copy of Annual Report Form (D-2) filed with the U.S. Department of Labor

3) Determination letter from the District Director of Internal Revenue

Please be advised that Mr. Sanchez Lugo, applied for the Disability Pension Benefit. His application was denied as ineligible by the Trustees of the above named Fund, at their meeting held on September 27, 1972. The facts in this case included the following:

1) Mr. Sanchez Lugo, had an aggregate of 195 months employment by contributing Employers during the period from 7/25/55 to 6/23/72.

2) An examination of Mr. Sanchez Lugo, revealed, that in the opinion of our doctor, Mr. Sanchez Lugo, is not disabled (see copy of letter dated 6/22/72, attached hereto).

3) Under the provisions of the Plan, Mr. Sanchez Lugo, to be eligible for the Disability Pension Benefit, is required to have been employed or available for employment by contributing Employers for at least 10 years and have an aggregate of 90 months employment in the ten (10) years immediately preceding the filing

EMPLOYEES RETIREMENT FUND
OF THE
ILLUMINATION PRODUCTS INDUSTRY
158-11 JEWEL AVENUE FLUSHING, N. Y. 11365
(212) 591-1150

OFFICERS
OWLAND J. SIMES
Chairman
YER TEITELBAUM
1st Vice Chairman
EPHEN KANYOOSKY
2nd Vice Chairman
RRY VAN ARSDALE JR.
reasurer
NETH CEPPOS
ecretary
NNIBAL IMBRO
ss't. Secretary
• • •
GREENBLATT
xecutive Secretary
• • •
OMMITTEE
yer Representatives
NETH CEPPOS
ON GRAFSTEIN
NARD GOLUB
NIBAL IMBRO
N H. KLIEGL II
ARD R. MURPHY
Y SCHNEIT
YLAND J. SIMES
ER TEITELBAUM
TER WEISS
er Alternates
EL BALDINGER
NETH GALE
ARD GLUCK
RT C. HAMBURGER
MAN HILFER
LAGER
PETRILLA
AY WEISSMAN
epresentatives
T BAUER
ERMAN
H BONO
EN KANYOOSKY
MRNKA
SCIACCA
STEIN
AS VAN ARSDALE
VAN ARSDALE JR.
OS ZAPPATA
lternates
RD J. CLEARY
AS SCOTLAN

of his application. In addition, he is required - to be permanently incapacitated or disabled to the extent that he can no longer secure gainful employment.

In view of the above, although Mr. Sanchez Lugo, has exceeded the Plan's minimum requirements, with respect to participation, he was found to be, in the opinion of our doctor, not disabled and therefore ineligible for the Disability Pension Benefit.

As to eligibility for the Standard Pension Benefit, Mr. Sanchez Lugo would have to remain employed or available for employment by contributing Employers, attain age 60 and have an aggregate of 90 months employment in the ten (10) years immediately preceding the filing of his application. If he ceases to be employed or available for employment participation ceases and upon again becoming employed by a contributing Employer his participation would commence as of the date of his re-employment and he would have to meet the eligibility requirements then in effect for new participants.

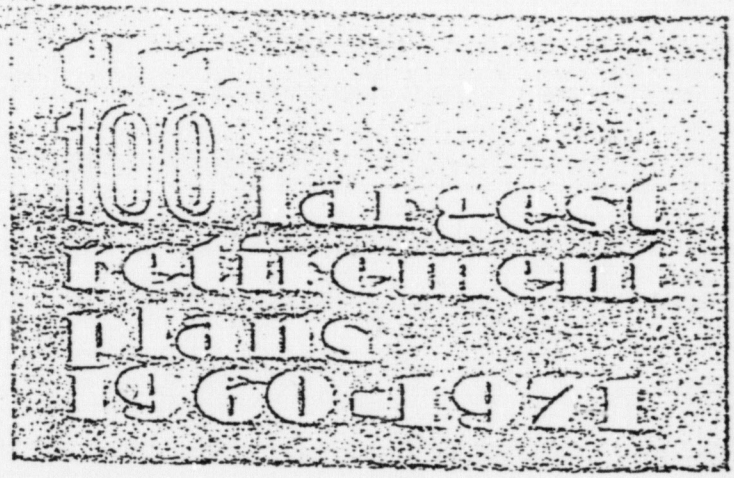
If you have any questions regarding the above, please don't hesitate to call.

Very truly yours,

Charles F. Roth
Ass't. Exec. Secty.

CFR:scb
encls.

A-134



U. S. DEPARTMENT OF LABOR

LABOR-MANAGEMENT SERVICES ADMINISTRATION

OFFICE OF LABOR-MANAGEMENT AND WELFARE-PENSION REPORTS

A-135

Preface

The Welfare and Pension Plans Disclosure Act, which became effective January 1, 1959, and was amended effective June 18, 1962, provides that administrators of most employee benefit plans which provide retirement benefits and cover 26 or more participants must file reports with the Secretary of Labor. These reports consist of an initial plan description report (Form D-1) and annual financial reports (Form D-2). As of January 1, 1972, there were approximately 44,400 active plans providing retirement benefits which had filed initial reports with the Office of Labor-Management and Welfare-Pension Reports.

Data presented in this report cover the 100 retirement benefit plans that had the largest value of assets in each of the twelve years during the period 1960-1971. Certain data on value of assets are presented for the even numbered years during this period while other financial data and data on characteristics of the plans are presented only for 1971.

This study was prepared in the Division of Reports and Analysis, John J. Murphy, Assistant Director, by Robert E. Walker of the Section of Statistics, under the direction of Edward M. Gordon, Chief, Branch of Technical Analysis and Statistics.

Leonard J. Lurie

Leonard J. Lurie, Director

Office of Labor-Management and
Welfare-Pension Reports

January 1973

CONTENTS

PREFACE — PAGE I

The 100 Largest Retirement Plans: 1960-1971

Introduction — 1

Characteristics — 1

Assets — 3

Liabilities and Reserves — 8

Receipts — 10

Disbursements — 11

Benefits Provided — 13

Vesting — 18

Source of Data and Methodology — 20

List of Charts

Chart 1 - 100 Largest Retirement Plans, 1971
Assets of All Private Non-insured Pension Plans and of the 100 Largest Retirement Plans — 2

Chart 2 - 100 Largest Retirement Plans, 1960-1971
Assets by Type — 4

Chart 3 - 100 Largest Retirement Plans, 1960-1971
Distribution of Assets by Type of Asset — 5

Chart 4 - 100 Largest Retirement Plans, 1960 and 1971
Distribution of Assets by Type of Asset and Type of Plan — 7

Chart 5 - 100 Largest Retirement Plans, 1971
Distribution of Receipts and Expenditures — 9

Appendix A - Tables

PAGE

Table 1 - Distribution of 100 Largest Retirement Plans by Asset Size Class for Selected Years, 1960-1971 24

Table 2A -Assets of the 100 Largest Retirement Plans by Type of Asset for Selected Years, 1960-1971
All Types of Plans 25

Table 2B -Assets of the 100 Largest Retirement Plans by Type of Asset for Selected Years, 1960-1971
Conventional Type Plans 26

Table 2C -Assets of the 100 Largest Retirement Plans by Types of Assets for Selected Years, 1960-1971
Profit-Sharing Type Plans 27

Table 3 - Liabilities and Reserves of the 100 Largest Retirement Plans by Type of Liability and Type of Plan, 1971 28

Table 4 - Distribution of 100 Largest Plans by Asset Size Class and Receipt Size Class, 1971 29

Table 5 - Receipts of 100 Largest Retirement Plans by Type of Receipts and Type of Plan, 1971 30

Table 6 - Disbursements of 100 Largest Retirement Plans by Type of Disbursement and Type of Plan, 1971 31

Table 7 - 100 Largest Retirement Plans -- Number of Plans and Number of Employees covered, by Industry Division, 1971 32

Table 8 - Benefits provided by the 100 Largest Retirement Plans by Method of Providing Benefits and Type of Plan, 1971 33

Table 9 - Assets of All Private Non-Insured Pension Funds by Type of Asset for Selected Years, 1960-1971 34

Appendix B

Name of Organization, Location of Principal Office of the Plan, Name of Plan, WP File Number, and Ranking of each of the 100 Largest Retirement Plans in 1971 35

The 100 Largest Retirement Plans: Assets and Plans: [illegible]

Introduction

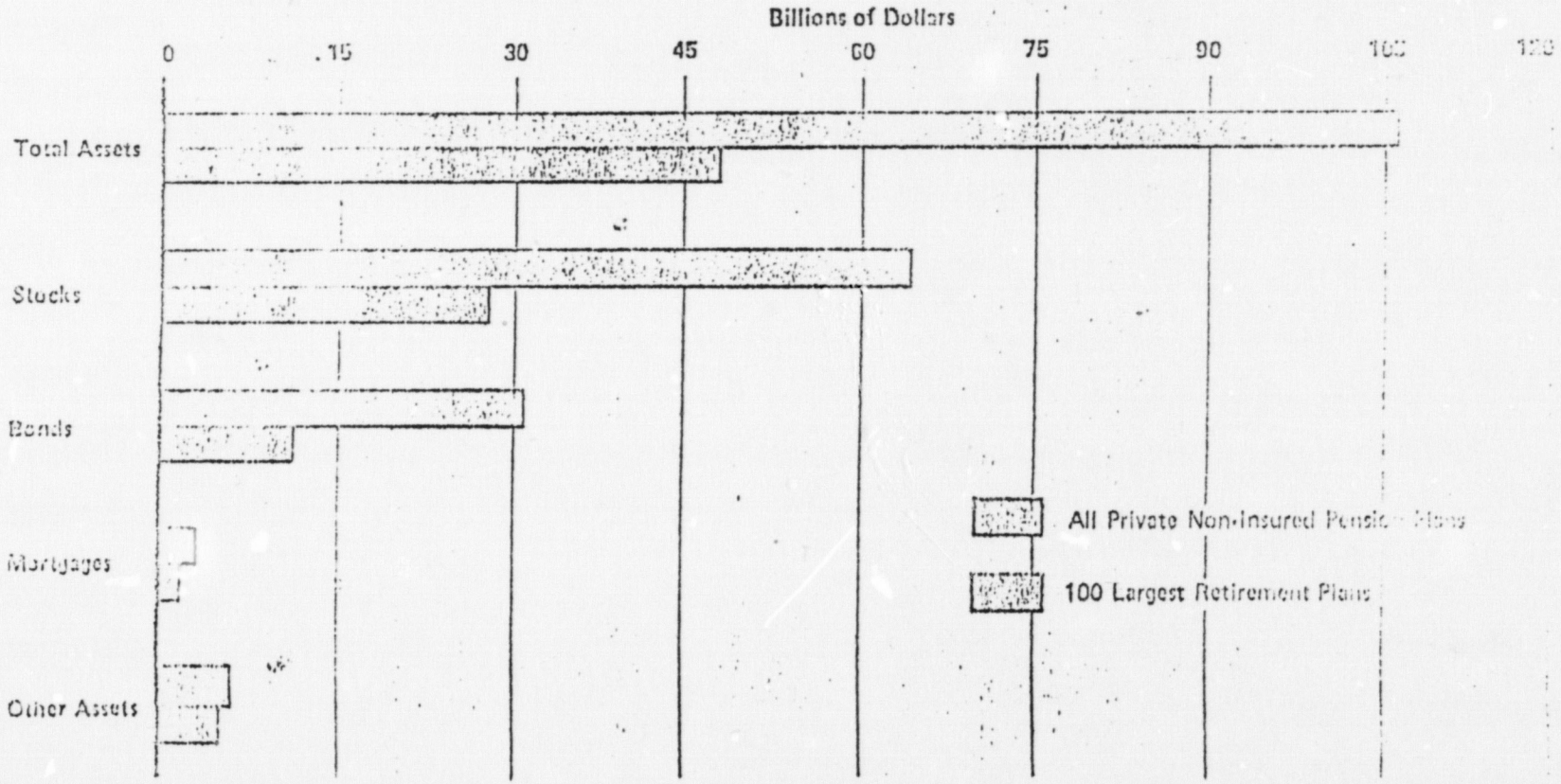
The book value of the assets of all private, non-insured pension funds increased from $33 billion in 1960 to $105 billion in 1971. During this same period, the total assets of the 100 retirement plans with the largest values of reported assets increased from $18 billion to $48 billion and accounted for approximately one half of the assets of all private, non-insured pension plans. In 1971, these 100 largest pension plans covered 5.9 million active and vested employees and provided $2.7 billion in benefits to 935 thousand retired employees. The 100 largest retirement plans also accounted for a large percentage of the total receipts, disbursements, and liabilities of all retirement plans; and they illustrate the myriad combinations of benefits provided, types of employees covered, methods of administration, etc., that are used in administering retirement plans.

Characteristics

Of the 100 largest retirement plans in 1971, 19 were of the profit-sharing type (plans with a profit-sharing, savings, or stock purchase provision) while 81 did not contain a profit-sharing, savings, or stock purchase provision, and for the purpose of this study are called "Conventional Type" Plans.

CHART 1

100 Largest Retirement Plans-1971 Assets of All Private Non-Insured Pension Plans and of the 100 Largest Retirement Plans



A-140

2

A 140

Ninety-three of the plans were single employer plans receiving contributions from one employer; six plans were administered by joint boards of employer and union representatives with two of these plans receiving contributions from more than one employer, and one plan was union administered and financed by contributions from the union. All profit-sharing type plans were of the single employer, employer administered type.

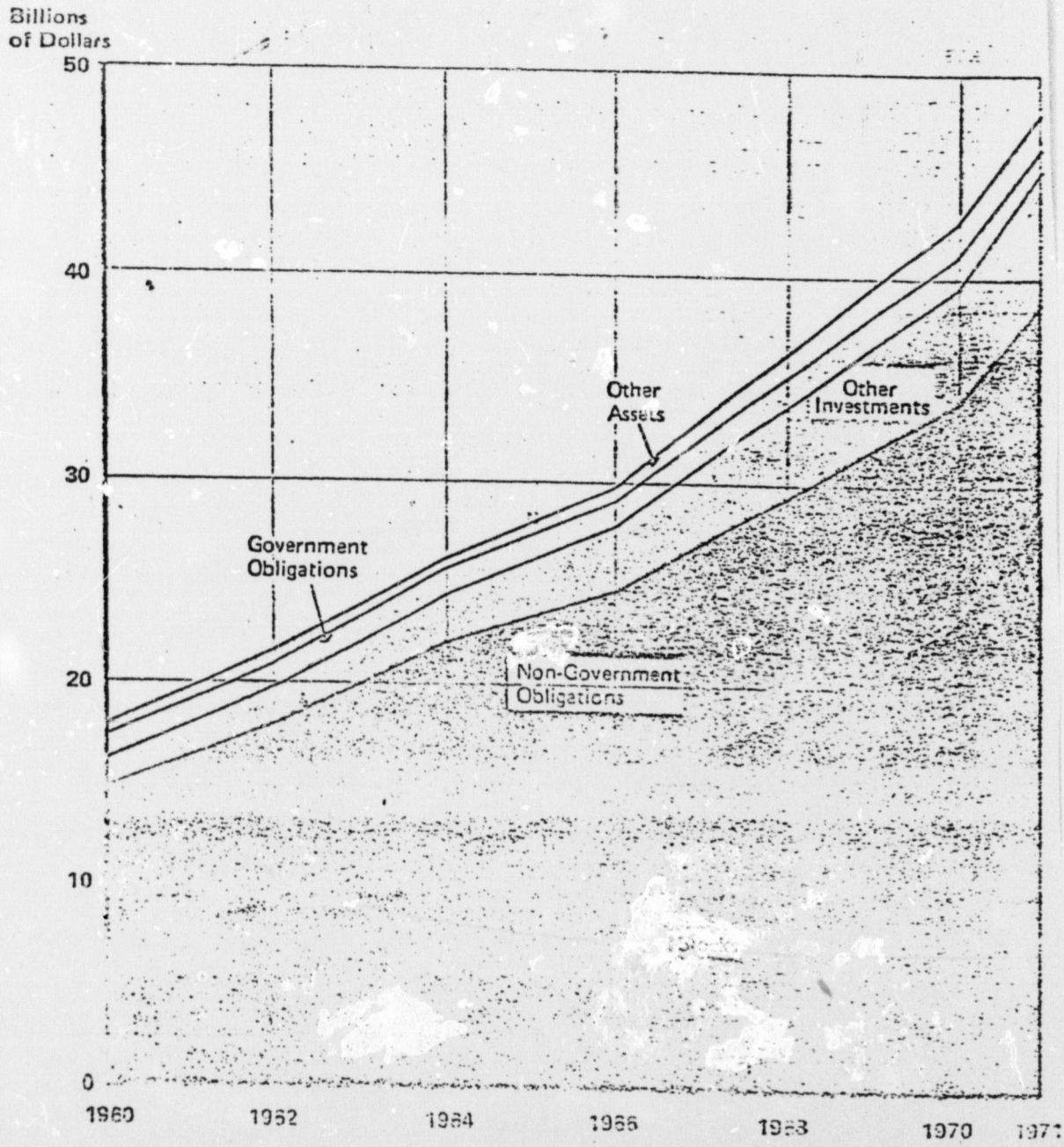
For 57 of the plans only the employer made contributions to the plan, 42 plans received contributions from both employers and employees, and one plan was financed from the general funds of a union. Of the 100 plans, eight covered hourly wage employees only, 19 covered only salaried employees, and 73 covered all employees. Sixty-four plans covered 4.6 million participants in the manufacturing industry; 20 plans covered 1 million participants in the communications and public utilities industry; and 16 plans covered 1.3 million participants in other industry divisions (see Table 7).

Assets

From 1960 to 1971, the assets of the 100 largest retirement plans increased from $18 billion to $48 billion, an increase of 168 percent (see Table 2A). This compares with a 221 percent increase in the total assets of all private non-insured pension plans over the same period (see Table 9). In 1960, there were only three plans in the 100 largest with assets of over $1 billion, and the assets of the plan with least

CHART 2

100 Largest Retirement Plans
1960 - 1971
Assets by Type

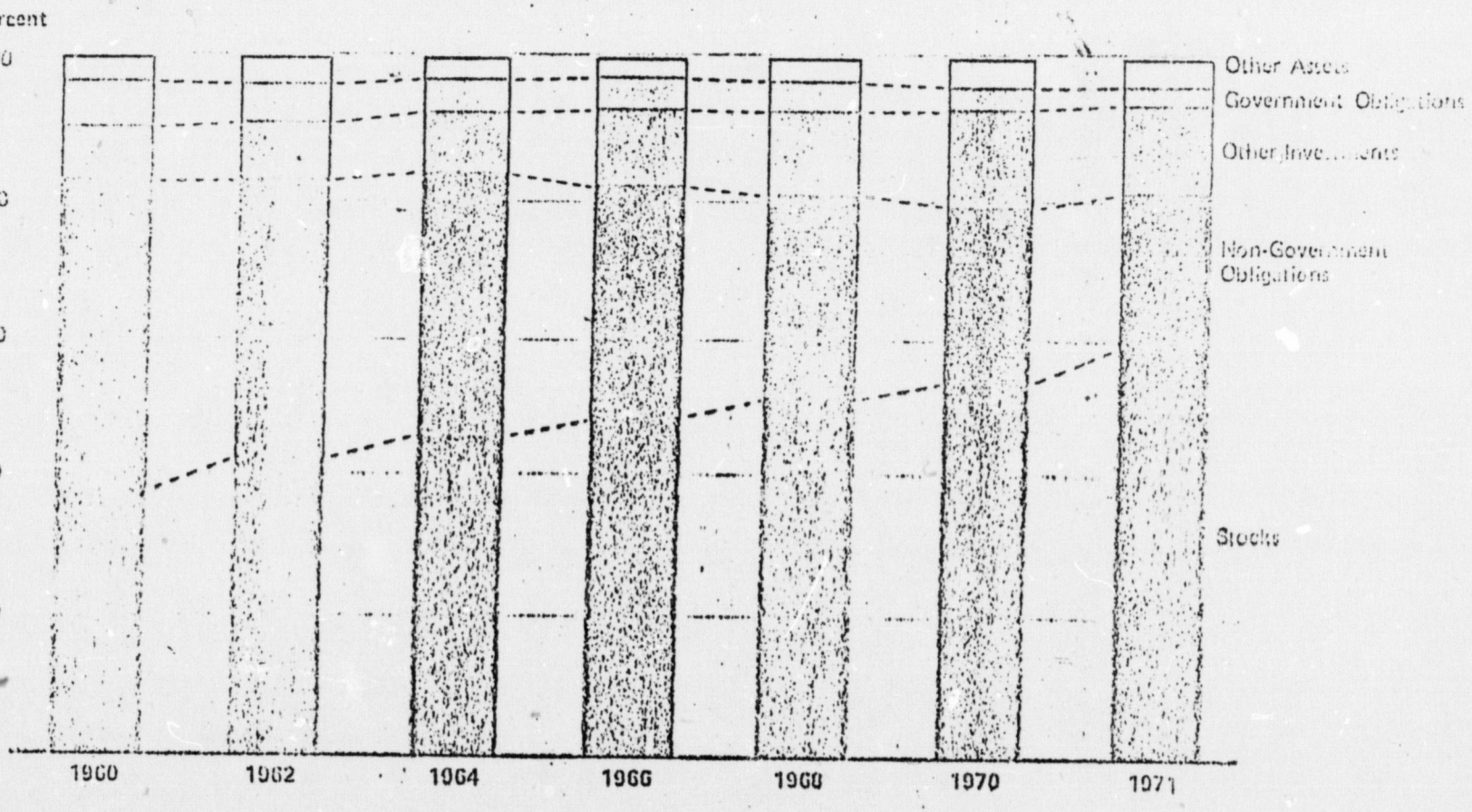


A-142

A-142

CHART 3

100 Largest Retirement Plans-1960 to 1971
Distribution of Assets



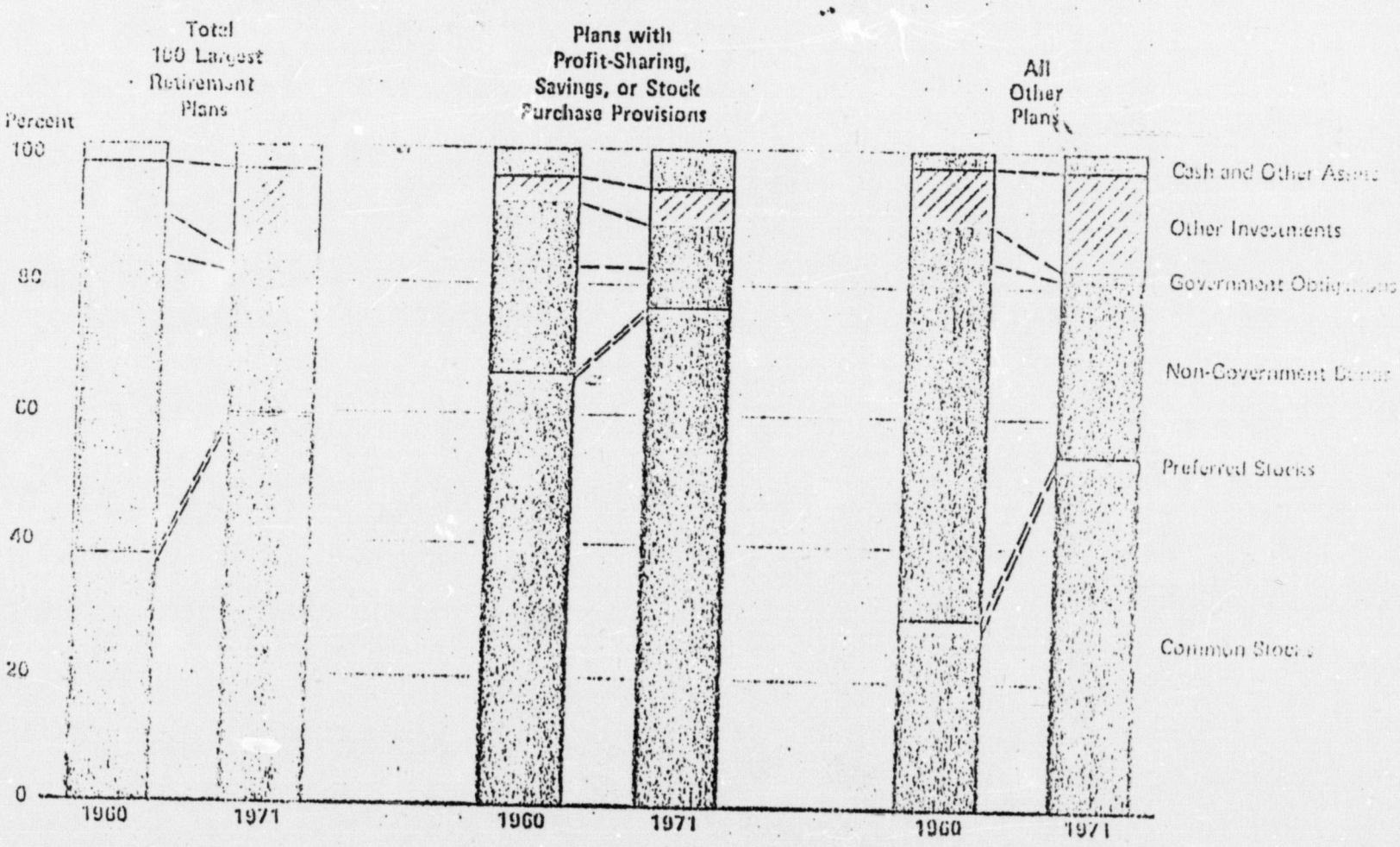
assets was $66 million; by 1971, there were five plans with assets over $1 billion, and the lowest ranking plan had assets of $150 million (see Table 1). Within the 100 largest plans, the median value of total assets in 1971 was $282 million and 50 plans had assets between $210 million and $430 million.

There was a shift in investment assets during the period 1960 to 1971. For each year during this period, approximately 97 percent of the total assets of the 100 largest plans has been classified as investment assets; but investments in stocks rose from 38 percent in 1960 to 59 percent in 1971. For the same period, investments in bonds and debentures dropped from 52 percent of total assets to 25 percent. This same shift in investments has occurred for all retirement plans as can be seen from Table 9.

Although the classification of assets used in Tables 2A and 9 are not strictly compatible, a comparison can be made between the distribution of assets for all plans and for the 100 largest plans. In 1971, U.S. Government securities and corporate bonds accounted for 30 percent of the total assets of all retirement plans while bonds and debentures accounted for 25 percent of the assets of the 100 largest retirement plans. The 100 largest plans had 59 percent of their assets invested in stocks and 4 percent invested in real estate, loans, and mortgages. For all retirement plans 61 percent of their assets was in the form of stocks and 4 percent in mortgages.

CHART 4

100 Largest Retirement Plans-1960 and 1971
Distribution of Assets



A 145

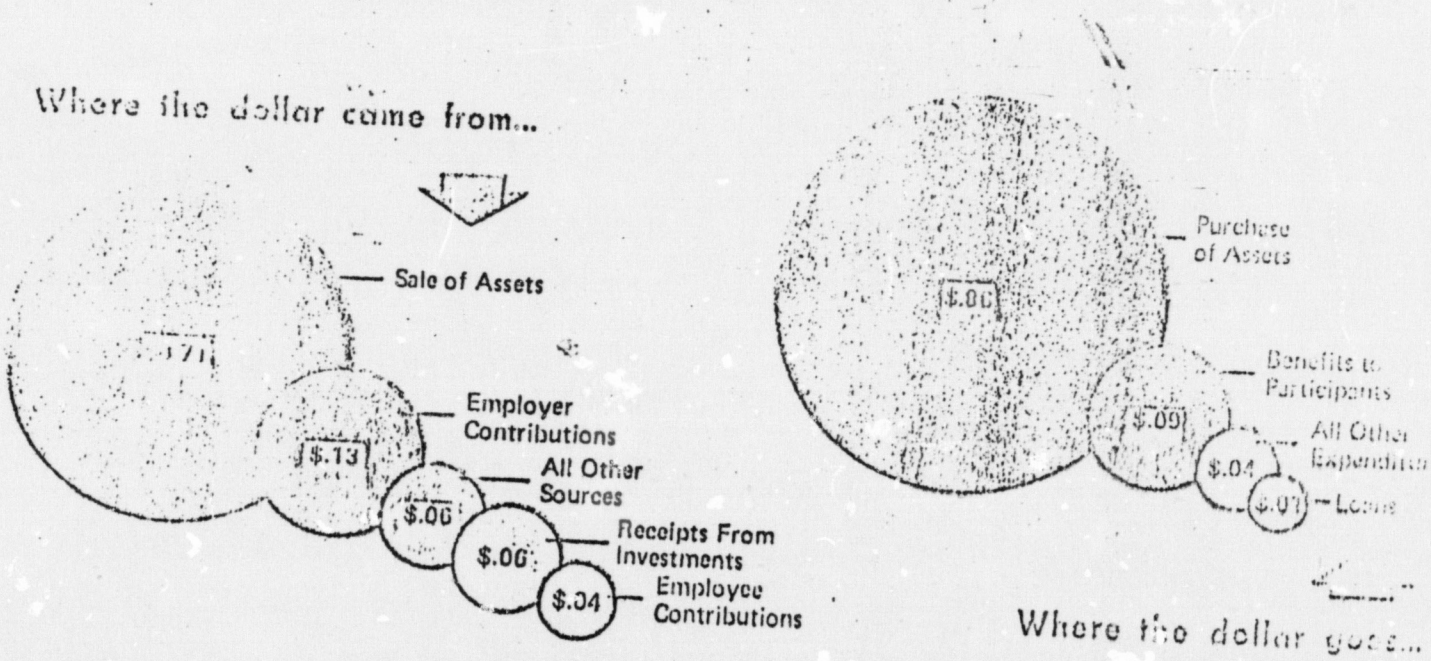
... the 100 largest plans showed a marked difference in the distribution of assets between profit-sharing and conventional type plans. In 1971, conventional type plans had 28 percent of their total assets invested in bonds and debentures and 54 percent invested in stocks; while profit-sharing type plans had 12 percent of their total assets invested in bonds and debentures and 77 percent invested in stocks (see Tables 2B and 2C). The proportion of assets invested in stocks was higher for profit-sharing type plans because they included plans with stock purchasing provisions as well as plans where a specified proportion of the employer's contributions must be in the form of stock of the employer's company. Fifteen of the 19 profit-sharing type plans reported a total of $6.2 billion as party-in-interest holdings; this was 58 percent of their total assets. The percentage of party-in-interest holdings for individual profit-sharing type plans ranged from 5 to 99 percent. Twenty-seven of the 81 conventional type plans reported a total of $686 million in party-in-interest holdings or only 2 percent of their total assets. For individual conventional type plans, the party-in-interest holdings as a percent of total assets ranged from less than 1 to 8 percent. The total party-in-interest holdings for all 100 plans was $6.9 billion or 14 percent of their total assets.

Liabilities and Reserves

In 1971 the total liability of the 100 largest retirement plans was $100 million, of which $5 million was unpaid benefit claims, $52 million

CHART
5

100 Largest Retirement Plans-1971
Distribution of Receipts and Expenditures



NOTE: This chart represents cash flows. It does not represent income and ...

A-147

[illegible] benefits payable, and $83 million in other liabilities. The 81 conventional type plans reported $39 million in liabilities and the 19 profit-sharing type plans reported $34 million in liabilities.

Forty-eight billion dollars or virtually all of the assets of the 100 largest plans was reserved for future benefits. Seventy-eight plans reported that an actuarial evaluation had been made; all of these evaluations were made in 1969 or later. Eighteen of the 22 plans not reporting an evaluation were of the profit-sharing type, which do not require an actuarial evaluation. The 74 plans which reported the results of their evaluations had a total reserve of $36 billion, which was 71 percent of their $51 billion accrued actuarial liability.

Receipts

The 100 largest plans in 1971 had total receipts of $28 billion (see Table 5). Thirteen percent of total receipts was received from employer contributions and 3 percent from employee contributions. Returns from investments (interest, dividends, rent, etc.) accounted for 6 percent, 3 percent came from other sources, and the largest part, 75 percent, came from the sale of assets. The $21.4 billion received from the sale of assets was $279 million over the cost of the assets sold. Five plans reported receipts from sale of assets to parties-in-interest totaling $206 million.

There were some marked differences in the distribution of receipts by type between the $24 billion total receipts of the 81 conventional type

and the $4 billion total receipts of the 13 profit-sharing type plans. For profit-sharing type plans, employee contributions accounted for 14 percent of their receipts and employer contributions accounted for 9 percent; while for conventional type plans employee contributions accounted for less than 1 percent of their total receipts and employer contributions accounted for 14 percent. For both types, returns on investments were 6 percent of the total receipts; while receipts from sales of assets were 77 percent for conventional type plans and 69 percent for profit-sharing type plans. Receipts from all other sources were 3 percent for conventional type plans and 2 percent for profit-sharing type plans.

As would be expected there was a positive correlation between a plan's total receipts and its total assets (see Table 4). The 3 plans with receipts over $1 billion each had assets of over $1.5 billion. The median value of receipts was $203 million with 50 plans having receipts between $104 million and $316 million.

Disbursements

Twenty-eight billion dollars was disbursed by the 100 largest plans in 1971, with $23 billion disbursed by conventional type plans and $5 billion disbursed by profit-sharing type plans (see Table 5). Purchases of assets accounted for $25 billion, which was 90 percent of the total disbursements, with $329 million being used by 11 plans for purchase of assets from parties-in-interest. The second largest type

of disbursement was for payment of benefits directly from the plans; this accounted for $2.5 billion or 9 percent of the total disbursements. The conventional type plans used 91 percent of their disbursement for purchase of assets while profit-sharing type plans used 86 percent of their total disbursements for the purchase of assets.

Administrative Expenses Charged to Plans -- 1971

Type of Expense	Thousands of Dollars	Percent
Total -- All Administrative Expenses	24,192	100.0
Salaries	3,279	13.6
Allowances, Expenses, Etc.	128	.5
Taxes	520	2.2
Fees and Commissions	13,820	57.1
Rent	345	1.4
Insurance Premiums	28	.1
All Other	6,074	25.1

The administrating organization of 47 of the 100 largest plans assumed all administrative costs and charged none to the plans, 10 organizations charged all or most of the administrative expenses to the plans, and 43 organizations charged only a portion of the administrative expenses to the plans, usually only the fees and commissions expenses. The total administrative expense reported in 1971 was $24 million with three items accounting for 96 percent of these expenses: 14 percent for salaries, 57 percent for fees and commissions, and 25 percent for miscellaneous expenses.

Classification

The classification of a plan's retire ent benefits was based upon the benefits specified in the plan documents which must be submitted by each reporting plan as a part of the description of the plan. The classifications and definitions of retirement benefits as used in this study are:

1. Retirement for age or service. Benefits for retirement for age or service usually require the attainment of a specific age combined with a given number of credited years of service. Payment of benefits may be made in a lump sum or in regular installments for a period of years or for life.

2. Retirement for disability. Immediate retirement benefits are usually restricted to employees with complete and total disability who have been regularly employed for a specific number of years. Disability retirement may be one aspect of the early retirement benefits provided by some plans.

3. Death benefits. Upon the death, before or after retirement, of an employee covered by the provisions of a retirement plan or combination pension and welfare plan, certain benefits may accrue to his surviving dependents or beneficiaries. These benefits may be in the form of: the surviving dependents acquiring a specific right to the continuation of all or part of the retirement benefits

of the deceased plan participant based upon the option of the participant or employer or upon the provisions of the plan; a lump sum payment of a part or all of the value of a participant's account to the deceased participant's beneficiary; or the proceeds of a life insurance policy other than a retirement income policy.

Types of Benefits Provided -- 1971

Type of Benefit Provided	Number of Plans: Total All Plans	Conventional Type Plans	Profit Sharing Plans
Retirement for Age or Service	100	81	19
Retirement for Disability	75	74	1
Death Benefits	98	79	19
Plans Also Providing Welfare Benefits	20	19	1

All the 100 largest plans provided retirement benefits for age or service. Retirement benefits for disability were provided by 75 plans and death benefits were provided by 98 of the plans. It should be noted that most participants in profit-sharing type plans could receive additional retirement benefits from other plans in which they participate. Welfare benefits were provided by 20 plans most of which were plans administered by telephone companies.

Retirement for Age or Service - 1971
Normal Age and Service Requirements for [illegible]

Age Requirement	Number of Plans:					
	Total All Service Requirements	Years of Service Required				
		None	10	15	20	Other
Total - All Age Requirements	100	50	13	26	6	5
65 Years of Age	78	34	13	25	5	1
62 Years of Age	1	1	0	0	0	0
60 Years of Age	3	2	0	1	0	0
Other Age Requirement	5	0	0	0	1	4
No Age Requirement	13	13	0	0	0	0

Seventy-eight of the plans defined 65 years of age as the normal age for retirement. The 13 plans without any age requirement were all profit-sharing type plans which allowed payment of all or part of a participant's account upon his termination of active employment. Fifty plans did not require any specific length of service before eligibility for normal retirement. Of the 50 plans requiring a specific length of service, 39 plans required 15 years or less.

Retirement for Disability - 1971
Age and Service Requirements

Age Requirement	Number of Plans:				
	Total All Service Requirements	Years of Service Required			
		None	10	15	Other
Total -- All Age Requirements	75	4	23	41	7
55 Years of Age	5	1	2	2	0
50 Years of Age	2	0	1	0	1
Other Age Requirement	3	0	0	0	3
No Age Requirement	65	3	20	39	3

Of the 75 plans providing disability benefits one had only an age requirement, 62 had only a service requirement, nine had an age and service requirement, and three had no age or service requirement. Sixty-four of the 71 plans with an age requirement required 10 or 15 years of service before eligibility for disability retirement benefits.

Method of Providing Benefits	Total All Plans	Number of Plans: Conventional Type Plans	Profit Sharing Plans
Total -- All Methods	100	81	19
Insured	1	1	0
Self-Insured	56	40	16
Insured and Self-Insured	21	19	2
Unfunded and Self-Insured	18	18	0
Insured, Unfunded, and Self-Insured	4	3	1

One of the 100 largest plans provided benefits only through insurance arrangements, 56 provided all benefits directly from the trust fund, and 43 used a combination of methods to provide benefits. Unfunded payments for disability and death benefits were characteristics of the plans administered by the telephone companies.

In 1971, 935 thousand retired employees received over $2.7 billion in benefits from the 100 largest plans (see Tables 7 and 8). Eighty-nine percent of the total benefits was paid directly from the assets of the funds, 5 percent was provided through the purchase of annuities, 4 percent was unfunded, and 2 percent was provided by other means.

In 1968, the $1.44 billion received from investments (interest, dividends, rent, etc.) was equal to 90 percent of the $1.61 billion paid in direct benefits to plan participants; while in 1971, the $1.75 billion

A-155

in contrasts from insurance-type plans [illegible] billion paid in direct benefits. For the 19 profit-sharing type plans the ratio was 81 percent in 1971 as compared with 73 percent for the 81 conventional type plans.

Vesting

Vesting is the retention by a retirement plan's participant of all or part of his pension rights when he has satisfied the plan's minimum age and service requirement. Full vesting means that the vested participant acquires the right to all his accrued benefits. In graded vesting, the vested participant acquires the right to a percentage of his accrued benefits when he has satisfied the minimum age and service requirements; this percentage increases as additional service requirements are met until all his accrued benefits are vested. Immediate vesting means that vested benefits are payable immediately upon the vested participant's termination of participation in the plan; whereas, in deferred vesting the payment of benefits is delayed until the vested participant reaches a specified retirement age.

Number of Plans with Vesting Provisions - 1971

Type of Vesting	Number of Plans: Total All Service Requirements	Years of Service Required: 5	10	15	Other
Total -- All Plans With Vesting	90	9	33	28	20
Plans with deferred Full Vesting	59	3	26	25	5
No Age Requirement	20	3	14	2	1
55 Years of Age Required	2	0	1	0	1
45 Years of Age Required	4	0	3	0	1
40 Years of Age Required	30	0	7	23	0
Other Age Requirement	3	0	1	0	2
Plans with Deferred Graded Vesting	10	1	5	3	1
Plans with Immediate Full Vesting	10	4	1	0	5
Plans with Immediate Graded Vesting	7	1	1	0	5
All Other Types or Combinations	4	0	0	0	4

There was an increase in the number of plans with a vesting provision from 64 plans in 1968 to 90 plans in 1971. This increase, caused in large part by the telephone companies' plans adding vesting provisions, is indicative of the increase in vesting provisions among all retirement plans. Fifty-nine of the plans provided for deferred, full vesting with 20 of these having only a service requirement and 39 having a service and age requirement. Ten plans provided for deferred, graded vesting. Seventeen plans provided for immediate vesting; all of these were profit-sharing type plans. Four plans had a combination of types of vesting provisions. The 90 plans

with vesting provisions covered 4,630 thousand active participants, 227 thousand retired participants, and 691 thousand former participants who had vested rights to deferred benefits.

Source of Data and Methodology

The source of the data presented in this publication was the information contained in the reports filed by employee benefit plans with the Secretary of Labor under the provisions of the Welfare and Pension Plans Disclosure Act. This Act provides that administrators of benefit plans of organizations affecting commerce (except for government administered plans, fraternal society administered plans, plans with fewer than twenty-six participants, and workmen's compensation type plans) must file a plan description report (Form D-1). Plans covering 100 or more participants must also file annual financial reports (Form D-2). Plans administered by foreign corporations but covering employees working in the United States are also required to file reports.

The plan description report (Form D-1) is the initial report filed by the plan's administrator. It contains information on the characteristics of the plan, i.e., type of administration, type of funding, fiscal year basis, types of employees covered, copies of the plans provisions, etc. Amendments and changes to the plan must be reported on Form D-1A, which lists changes in the information given in the initial report. The annual financial report (Form D-2) contains a statement of assets and liabilities by type as of the end of the plan's fiscal or policy year, receipts and disbursements during the fiscal year, number of plan participants, party-in-interest holdings and

A-158

[illegible] schedules, and other financial information.

Copies of these reports can be inspected in the Public Documents Room, Office of Labor-Management and Welfare Pension Reports, U. S. Department of Labor, 8757 Georgia Avenue, Silver Spring, Maryland, 20910. Reproduction of reports can be obtained through that office at a cost of $0.20 per reproduction page. Correspondence on a particular plan should include its WP file number, which is a control number assigned to each reporting plan by the Office of Labor-Management and Welfare Pension Reports.

Many corporations now administer several retirement plans: one for salaried employees, one for hourly wage employees, and a profit-sharing type plan. Each of these plans is reported separately to the Secretary of Labor, and in this study each separately reported plan was considered a separate entity.

The financial data presented in this publication for 1970 and 1971 are a summation of information contained in the annual reports filed by plans having a policy or fiscal year ending between January 1 and December 31 of the year. The plans used for each year were the one hundred plans that provided retirement benefits and that had the largest values of total assets reported on their annual financial report after certain modifications were made to these values. The modifications made were: (1) the value of deposit administration accounts reported as assets was subtracted from the total assets, (2) a plan's share of the assets of a master trust was prorated to its total assets, and (3) negative cash-on-hand values were listed as liabilities rather than as assets.

A-159

The data for the characteristics of the one hundred largest retirement plans in 1971 were obtained from their plan description reports and annual financial reports.

Data for the years 1960-1968 were also obtained from reports filed by plans for those years and were previously included in the publication The 100 Largest Retirement Plans 1960-1968, issued by the Department of Labor in 1969.

There were some differences in the methods and dates of reporting, which caused some inaccuracy in the data presented in this publication. Although most plans reported the market value of their assets, a few plans reported the cost value. The financial reporting dates of the plans were spread throughout the calendar year, but 91 of the plans had a reporting date in the last quarter of the calendar year with 81 of these plans having a reporting date of December 31. It should also be noted that a few plans provided welfare benefits as well as retirement benefits, but most of these welfare benefits were unfunded, with the assets of the plans reserved for retirement benefits.

One plan reported receipts from sale of assets and disbursements for purchase of assets of over six billion dollars in 1971, because of its investment in short term securities. It was felt that these values were abnormal and would distort the totals for all plans; therefore, they were not used in the calculation of the receipts and disbursements tables for 1971.

Except for the modifications of [illegible] figures presented in this publication represent a summarization of the data reported by the individual plans. It is felt that these figures present an accurate description of the finances and characteristics of the one hundred largest retirement plans.

A-161

TABLE 1 - Distribution of 100 Largest Retirement Plans by Asset Size Class for Selected Years, 1950-1977

Asset Size Class	Number of Plans For Year: 1/						
	1950	1952	1954	1956	1968	1972	1977
$2,000 million or more	-	-	-	-	1	2	3
$1,500-$1,999.9 million	-	-	1	2	2	4	3
$1,000-$1,499.9 million	3	3	3	4	4	2	3
$500-$999.9 million	4	5	7	8	10	16	15
$400-$499.9 million	2	4	5	4	7	6	10
$300-$399.9 million	5	6	7	9	9	12	12
$250-$299.9 million	4	5	3	8	7	9	13
$200-$249.9 million	7	4	8	6	10	12	12
$150-$199.9 million	6	9	10	17	25	29	22
$100-$149.9 million	13	26	30	35	25	8	-
$50-$99.9 million	53	38	26	7	-	-	-
Less than $50 million	3	-	-	-	-	-	-
Assets of plan ranking lowest (millions of dollars)	$48.2	$62.2	$80.4	$92.5	$117.2	$132.1	$150.3

1/ Data are for plans having fiscal, policy, or contract year ending between January 1, and December 31, of the specified year.

Table 2A - Assets of the 100 Largest Retirement Plans by Type of Asset for Selected Years, 1960-1971
All Types of Plans

Type of Asset	Values for Year 1/						
	1960	1962	1964	1966	1968	1970	1971
Number of Plans	100	100	100	100	100		
Value of Assets (Millions of Dollars)							
Total -- All Assets	17,916.1	21,566.4	26,442.5	29,881.2	36,361.8	42,924.4	
Cash	165.4	250.9	310.4	281.3	207.1	190.1	
Investment Assets	17,453.4	20,990.0	25,766.4	29,175.7	35,333.5	41,348.3	
Bonds and Debentures	9,321.3	10,109.7	11,413.0	11,608.5	12,199.6	12,367.8	
Government Obligations	1,164.0	1,223.4	1,293.9	1,322.3	1,438.9	1,456.4	
Non-government Obligations	8,157.3	8,886.3	10,119.1	10,286.2	10,760.7	10,941.4	
Stocks	6,777.0	9,128.7	12,048.4	14,323.4	18,638.6	23,083.3	
Preferred	257.9	212.7	167.8	154.6	348.4	473.6	
Common	6,519.1	8,916.0	11,880.6	14,168.8	18,290.2	22,609.7	
Other Investment Assets	1,365.1	1,751.6	2,305.0	3,243.8	4,495.3	5,849.2	
Real Estate Loans and Mortgages	2/	2/	2/	2/	1,528.3	2,177.3	
Loans and Notes Receivable	2/	2/	2/	2/	676.8	1,293.3	
All Other Investment Assets	2/	2/	2/	2/	2,290.2	2,377.5	
All Other Assets	287.3	325.5	365.7	424.2	821.2	1,433.4	
Value of Assets (Percent Disbribution)							
Total -- All Assets	100.0	100.0	100.0	100.0	100.0	100.0	
Cash	.9	1.2	1.2	.9	.6	.4	
Investment Assets	97.5	97.3	97.4	97.6	97.1	96.3	
Bonds and Debentures	52.1	46.9	43.7	38.8	33.5	28.8	
Government Obligations	6.5	5.7	4.9	4.4	4.0	3.4	
Non-government Obligations	45.6	41.2	38.3	34.4	29.5	25.5	
Stocks	37.8	42.3	45.5	47.9	51.2	53.8	
Preferred	1.4	1.0	.6	.5	1.0	1.1	
Common	36.4	41.3	44.9	47.4	50.2	52.7	
Other Investment Assets	7.6	8.1	8.7	10.9	12.4	13.6	
Real Estate Loans and Mortgages	2/	2/	2/	2/	4.2	5.1	
Loans and Notes Receivable	2/	2/	2/	2/	1.9	3.0	
All Other Investment Assets	2/	2/	2/	2/	6.3	5.5	
All Other Assets	1.6	1.5	1.4	1.5	2.3	3.3	

1/ Data included are for plans having fiscal, policy, or contract years ending between January 1, and December 31, of the specified year.
2/ Not available.

A-1(6)

Table 2B - Assets of the 100 Largest Retirement Plans by Type of Assets for Selected Years, 1960-1971

Conventional Type Plans 3/

Type of Asset	Value for Year 1/						
	1960	1962	1964	1966	1968	1970	1971
Number of Plans	81	82	83	83	83	83	84
	Value of Assets (Millions of Dollars)						
Total -- All Assets	13,783.1	16,508.3	19,760.4	22,178.0	27,321.5	33,963.5	38,[illegible].2
Cash	78.2	154.6	132.6	191.6	151.5	93.6	[illegible]
Investment Assets	13,494.6	16,093.4	19,230.0	21,862.1	26,982.9	33,850.6	[illegible]
Bonds and Debentures	8,240.7	8,955.8	10,210.4	10,287.3	10,420.1	11,149.2	[illegible]
Government Obligations	761.2	772.8	791.1	709.6	704.6	746.6	[illegible]
Non-government Obligations	7,479.5	8,183.0	9,419.3	9,577.7	9,635.5	10,402.6	[illegible]
Stocks	4,042.5	5,524.8	6,918.4	8,529.8	12,583.3	16,521.4	[illegible]
Preferred	245.7	203.8	160.1	146.6	324.9	349.8	[illegible]
Common	3,796.8	5,321.0	6,758.3	8,383.2	12,218.4	16,171.6	[illegible]
Other Investment Assets	1,211.4	1,612.8	2,101.2	3,045.0	3,809.5	5,280.0	[illegible]
Real Estate Loans and Mortgages	2/	2/	2/	2/	1,487.8	2,095.4	[illegible]
Loans and Notes Receivable	2/	2/	2/	2/	464.4	904.0	[illegible]
All Other Investment Assets	2/	2/	2/	2/	1,947.3	2,780.5	[illegible]
All Other Assets	210.3	260.3	297.8	124.3	371.1	619.4	[illegible]
	Value of Assets (Percent Distribution)						
Total -- All Assets	100.0	100.0	100.0	100.0	100.0	100.0	[illegible]
Cash	.6	.9	.7	.9	.6	.3	[illegible]
Investment Assets	97.9	97.5	97.6	98.6	98.1	97.1	[illegible]
Bonds and Debentures	59.8	54.3	51.7	46.4	38.1	32.8	[illegible]
Government Obligations	5.5	4.7	4.0	3.2	2.9	2.2	[illegible]
Non-government Obligations	54.3	49.6	47.7	43.2	35.2	30.6	[illegible]
Stocks	29.3	33.4	35.0	38.5	45.8	48.6	[illegible]
Preferred	1.8	1.2	.8	.7	1.2	1.3	1.1
Common	27.5	32.2	34.2	37.8	44.6	47.5	53.1
Other Investment Assets	8.8	9.8	10.9	13.7	14.2	15.5	15.1
Real Estate Loans and Mortgages	2/	2/	2/	2/	5.4	6.2	[illegible]
Loans and Notes Receivable	2/	2/	2/	2/	1.7	2.5	[illegible]
All Other Investment Assets	2/	2/	2/	2/	7.1	6.4	[illegible]
All Other Assets	1.5	1.6	1.5	.5	1.3	2.0	2.3

1/ Data included are for plans having fiscal, policy, or contract years ending between January 1, and December 31, of the specified year.

2/ Not available.

3/ Plans without profit-sharing, savings, or stock purchase provisions.

A-164

Table 2[illegible] - Assets of the 100 Largest Retirement Plans by Type of Assets for Selected Years, 1960-1971
Profit - Sharing Type Plans 3/

Type of Asset	Value for Year 1/						
Number of Plans	1960 19	1962 18	1964 17	1966 17	1968 17	1970 17	1971 17
	Value of Assets (Millions of Dollars)						
Total -- All Assets	4,133.0	5,058.1	6,682.1	7,703.1	8,970.3	[illegible]	[illegible]
Cash	87.2	96.3	127.9	89.7	55.7	[illegible]	[illegible]
Investment Assets	3,968.8	4,896.6	6,486.4	7,313.6	8,470.9	[illegible]	[illegible]
Bonds and Debentures	1,080.6	1,153.9	1,202.6	1,321.2	1,779.7	[illegible]	[illegible]
Government Obligations	402.8	450.6	502.3	612.7	654.4	[illegible]	[illegible]
Non-government Obligations	677.8	703.3	699.8	708.5	1,125.3	[illegible]	[illegible]
Stocks	2,734.5	3,603.9	5,130.0	5,793.6	6,099.3	[illegible]	[illegible]
Preferred	12.2	8.9	7.7	8.0	23.5	[illegible]	[illegible]
Common	2,722.3	3,595.0	5,122.3	5,785.6	6,071.8	[illegible]	[illegible]
Other Investment Assets	153.7	138.8	153.8	198.8	595.9	[illegible]	[illegible]
Real Estate Loans and Mortgages	2/	2/	2/	2/	40.5	[illegible]	[illegible]
Loans and Notes Receivable	2/	2/	2/	2/	212.5	[illegible]	[illegible]
All Other Investment Assets	2/	2/	2/	2/	342.9	[illegible]	[illegible]
All Other Assets	77.0	65.2	67.9	299.8	443.7	[illegible]	[illegible]
	Value of Assets (Percent Distribution)						
Total -- All Assets	100.0	100.0	100.0	100.0	100.0	[illegible]	[illegible]
Cash	2.1	1.9	1.9	1.2	.6	[illegible]	[illegible]
Investment Assets	96.0	96.8	97.1	95.0	94.4	[illegible]	[illegible]
Bonds and Debentures	26.1	22.8	18.0	17.2	19.8	[illegible]	[illegible]
Government Obligations	9.7	8.9	7.5	8.0	7.3	[illegible]	[illegible]
Non-government Obligations	16.4	13.9	10.5	9.2	12.5	[illegible]	[illegible]
Stocks	66.2	71.3	76.8	75.2	68.0	[illegible]	[illegible]
Preferred	.3	.2	.1	.1	.3	[illegible]	[illegible]
Common	65.9	71.1	76.7	75.1	67.7	[illegible]	[illegible]
Other Investment Assets	3.7	2.7	2.3	2.6	6.6	[illegible]	[illegible]
Real Estate Loans and Mortgages	2/	2/	2/	2/	.4	[illegible]	[illegible]
Loans and Notes Receivable	2/	2/	2/	2/	2.4	[illegible]	[illegible]
All Other Investment Assets	2/	2/	2/	2/	3.8	[illegible]	[illegible]
All Other Assets	1.9	1.3	1.0	3.8	5.0	[illegible]	[illegible]

1/ Data included are for plans having fiscal, policy, or contract years ending between January 1, and December 31, of the specified year.
2/ Not available.
3/ Plans with profit-sharing, savings, or stock purchase provisions.

A-163

Table 3 - Liabilities and Reserves of the 100 Largest Retirement Plans by Type of Liability and Type of Plan, 1971

Type of Liability	Liability and Reserves					
	Value (Millions of Dollars)			Percent		
	Total - All plans	Conventional type plans	Profit sharing plans	Total - All plans	Conventional type plans	Profit sharing plans
Number of Plans	100	81	19	100	81	19
Total - Liabilities and Reserves	48,054.1	37,223.5	10,825.6	100	100.0	100.0
Total - All Liabilities	100.0	63.8	31.2	.2	.2	.3
Insurance premiums payable	1/	1/	0	2/	2/	0
Unpaid benefit claims	5.4	4.0	1.4	2/	2/	2/
Accounts payable	51.9	26.1	25.8	.1	.1	.2
Other liabilities	42.7	38.7	4.0	.1	.1	2/
Reserves for future benefits	47,954.1	37,159.7	10,794.4	99.8	99.8	99.7

1/ Less than $500.
2/ Less than 1/10 of one percent.

A-166

Table 4 - Distribution of 100 Largest Retirement Plans by Asset Size Class and Receipt Size Class, 1971

Asset Size Class	Total all receipt sizes	Number of Plans With Total Receipts in Range of:							
		$1,000 million and over	$500 - 999.9 million	$400 - 499.9 million	$300 - 399.9 million	$200 - 299.9 million	$100 - 199.9 million	$50 - 99.9 Million	Under $50 million
Total - All asset sizes	100	3	11	3	12	21	27	15	7
$2,000 million or more	3	1	2	-	-	-	-	-	-
$1,500-1,999.9 million	3	2	1	-	-	-	-	-	-
$1,000-1,499.9 million	3	-	2	-	1	-	-	-	-
$500-999.9 million	15	-	6	2	2	4	1	-	-
$400-499.9 million	10	-	-	1	3	3	3	-	-
$300-399.9 million	12	-	-	-	4	5	2	1	-
$250-299.9 million	13	-	-	-	1	5	4	3	-
$200-249.9 million	19	-	-	-	1	2	5	8	3
$150-199.9 million	22	-	-	-	-	2	12	4	4

A-167

Table 5 - Receipts of 100 Largest Retirement Plans by Type of Receipt and Type of Plan, 1971 1/

Type of Receipt	Receipts					
	Value (Millions of Dollars)			Percent		
	Total - All plans	Conventional type plans	Profit sharing plans	Total - All plans	Conventional type plans	Profit sharing plans
Number of Plans	100	81	19	100	81	19
Total - All Receipts	28,482.5	23,696.3	4,786.2	100.0	100.0	100.0
Contributions - Total	4,622.0	3,503.0	1,119.0	16.2	14.8	23.4
Employer	3,780.8	3,331.9	448.9	13.2	14.1	9.4
Employee	841.2	171.1	670.1	3.0	.7	14.0
Receipts from Investments - Total	1,753.8	1,466.5	287.3	6.2	6.2	6.0
Interest	822.4	760.1	62.3	2.9	3.2	1.3
Dividends	816.4	598.4	218.0	2.9	2.5	4.6
Other investment receipts	115.0	108.0	7.0	.4	.5	.1
Sale of Assets	21,427.2	18,120.6 2/	3,306.6	75.2	76.5	69.1
All other receipts	679.5	606.2	73.3	2.4	2.5	1.5

1/ Represents cash flow into plans and not income.
2/ Does not include values for one plan which had receipts from sale of assets of over $6 billion because of investing in short term securities.

A-168

Table 6 - Disbursements of 100 Largest Retirement Plans by Type of Disbursements and Type of Plans, 1977 1/

Type of Disbursements	Disbursements					
	Value (Millions of Dollars)			Percent		
	Total - All plans	Conventional type plans	Profit sharing plans	Total - All plans	Conventional type plans	Profit sharing plans
Number of Plans	100	81	19	100	81	19
Total - All Disbursements	27,910.2	23,127.5	4,795.7	100.0	100.0	100.0
Insurance and Annuity premiums	24.2	3.1	21.1	.1	2/	.4
Benefits paid directly by plan	2,435.6	1,966.4	469.2	8.7	8.5	9.8
Payments to independent organizations to provide benefits	.2	.2	0	2/	2/	0
Purchase of assets - Total	25,071.7	20,941.1	4,130.6	89.8	90.6	86.3
Investments (non real estate)	24,745.7	20,615.1 3/	4,130.6	88.6	89.2	86.3
Real Estate	326.0	326.0	0	1.2	1.4	0
Administrative expenses	24.2	19.9	4.3	.1	.1	.1
Loans (money loaned)	254.0	116.7	137.3	.9	.5	2.9
All other disbursements	103.3	80.1	23.2	0.4	.3	.5

1/ Represents cash flow from plans and not expenses.
2/ Less than 1/10 of one percent.
3/ Does not include values for one plan which had disbursement for purchases of investments of over $6 billion because of investing in short term securities.

A-169

Table 7 - 100 Largest Retirement Plans -- Number of Plans and Number of Employees Covered, by Industry Division, 1971

Industry Division	Number of Plans	Number of Employees							
		Number (Thousands)				Percent			
		Total -- All Employees	Active Employees	Retired Employees	Vested 2/ Former Employees	Total -- All Employees	Active Employees	Retired Employees	Vested 2/ Former Employees
Total -- All Industry Divisions	100	6,833.7	5,747.3	935.2	151.3	100.0	100.0	[illegible]	[illegible]
Construction	2	335.4	293.1	42.3	0	4.9	5.1	4.5	0
Manufacturing 1/	64	4,505.9	3,769.0	670.7	146.2	67.1	65.6	71.7	96.7
Transportation	5	568.3	478.4	87.8	2.1	8.3	8.3	9.4	1.4
Communications and Public Utilities	20	980.7	863.8	114.3	2.6	14.4	15.0	12.2	1.7
Wholesale and Retail Trade	5	320.5	306.7	13.7	.2	4.7	5.4	1.5	.1
Finance, Insurance, and Real Estate	3	34.4	28.4	6.0	3/	.5	.5	.6	4/
Service	1	8.6	7.9	.5	.2	.1	.1	.1	.1

1/ Includes petroleum processing.
2/ Some plans included vested former employees with active or retired employees.
3/ Less than 50 employees.
4/ Less than 1/10 of one percent.

Table 8 - Benefits Provided by the 100 Largest Retirement Plans by Method of Providing Benefits and Type of Plan, 1971

Method of Providing Benefits	Benefits Provided					
	Value (Millions of Dollars)			Percent		
	Total - All plans	Conventional type plans	Profit-sharing plans	Total-All plans	Conventional type plans	Profit-sharing plans
Total - All Methods	2,749.6	2,256.3	493.2	100.0	100.0	100.0
Benefits paid directly by plan	2,405.6	1,936.4	469.2	88.6	87.2	95.1
Unfunded benefits	120.7	120.7	0	4.4	5.3	0
Benefits paid by insurance carriers	66.2	61.1	5.1	2.4	2.7	1.0
Annuities purchased	126.9	107.9	18.9	4.6	4.8	3.9
Payments to independent organizations to provide benefits	.2	.2	0	1/	1/	0
Number of plans	100	81	19	100	81	19

1/ Less than 1/10 of one percent.

Table 9 - Assets of All Private Non-Insured Pension Funds by Type of Asset for Selected Years, 1960-1971

Note: Figures may not add to totals because of rounding.

Type of Asset	Book Value of Assets for End of Year: 1960	1962	1964	1966	1968	1970	1971
			Millions of Dollars				
Total - All Assets	33,135	41,890	52,420	66,170	83,070	97,[illegible]	[illegible]
Cash and Deposits	546	710	890	900	1,590	1,[illegible]	[illegible]
U. S. Government Securities	2,683	2,920	3,190	2,750	2,760	3,[illegible]	[illegible]
Corporate Bonds	15,699	18,100	21,420	25,230	27,000	29,[illegible]	[illegible]
Preferred Stock	776	750	650	790	1,330	1,[illegible]	[illegible]
Common Stock	10,733	15,730	20,950	29,070	41,740	51,[illegible]	[illegible]
Mortgages	1,301	1,880	2,780	3,910	4,070	4,[illegible]	[illegible]
Other Assets	1,399	1,800	2,540	3,520	4,580	4,[illegible]	4,[illegible]
			Percent Distribution				
Total - All Assets	100.0	100.0	100.0	100.0	100.0	100.0	[illegible]
Cash and Deposits	1.6	1.7	1.7	1.4	1.9	1.9	[illegible]
U. S. Government Securities	8.1	7.0	6.1	4.2	3.3	3.1	2.6
Corporate Bonds	47.4	43.2	40.9	38.1	32.5	30.6	[illegible]
Preferred Stock	2.3	1.8	1.2	1.2	1.6	1.8	1.7
Common Stock	32.4	37.5	40.0	43.9	50.2	53.2	[illegible]
Mortgages	3.9	4.5	5.3	5.9	4.9	4.4	3.5
Other Assets	4.2	4.3	4.8	5.3	5.5	4.9	4.5

Source: United States Securities and Exchange Commission Statistical Series, Releases No. 2359, May 1, 1969 and No. 2599, June 28, 1972.
Figures include data for non-profit organizations and multiemployer plans.

[illegible] THE ONE HUNDRED LARGEST PRIVATE PENSION PLANS -- 1977

[illegible] each of the one hundred largest retirement plans (based on total value of assets) filing reports with the U.S. Department of Labor in 1977, the name of the plan, name of the organization associated with the plan, city and state location of principal office of the plan, WP file number of plan, and ranking of the plan are given in this appendix.

The plans were ranked in descending order of value of assets, i.e., a rank of one was assigned to the plan with the greatest value of assets and a rank of one hundred was assigned to the plan with the lowest value of assets.

For an explanation of the WP file number, description of information available in the reports, and procedure for obtaining copies of reports, see the "Source of Data and Methodology" section on page

RANK	NAME OF ORGANIZATION AND LOCATION OF PRINCIPAL OFFICE OF PLAN	NAME OF PLAN	WP FILE NUMBER
66	A and P Tea Co. (Great Atlantic and Pacific Tea Co., Inc.) New York, N.Y.	Employees' Retirement Plan	017696
76	Air Canada Montreal, Quebec, Canada	Pension Plan	017467
81	Aluminum Co. of America Pittsburgh, Pa.	Employees' Retirement Plan IA	048409
93	Aluminum Co. of America Pittsburgh, Pa.	Employees' Retirement Plan II & IIA	048410
79	American Cyanamid Co. Wayne, N.J.	Employees Retirement Plan	033306
91	American Electric Power Service Corp. New York, N.Y.	American Electric Power System Retirement Plan	070647
92	American Telephone and Telegraph Co. New York, N.Y.	Plan for Employees' Pensions, Disability Benefits and Death Benefits	037429

RANK	NAME OF ORGANIZATION AND LOCATION OF PRINCIPAL OFFICE OF PLAN	NAME OF PLAN	I.R. FILE NUMBER
82	Armco Steel Corp. Middletown, Ohio	Non-Contributory Pension Plan	103571
88	Armour and Co. Phoenix, Ariz.	Salaried Employees' Pension Plan	003378
30	Atlantic Richfield Co. Philadelphia, Pa.	Retirement Plan	046846
36	Bell Telephone Co. of Pennsylvania Philadelphia, Pa.	Plan for Employees' Pensions, Disability Benefits and Death Benefits	049541
56	Bell Telephone Laboratories, Inc. Murry Hill, N.J.	Plan for Employees' Pensions, Disability Benefits and Death Benefits	049208
79	Bendix Corp. Southfield, Mich.	Salaried Employees Pension Plan	009489
21	Bethlehem Steel Corp. Bethlehem, Pa.	Pension Plan	017205
31	Boeing Co. Seattle, Wash.	Employee Retirement Plan	009894
74	Boeing Co. Seattle, Wash.	Voluntary Savings Plan	196367
20	Canadian Pacific Limited Montreal, Quebec, Canada	Pension Plan	001935
73	Caterpillar Tractor Co. Peoria, Ill.	Non-Contributory Pension Plan	073066
99	Caterpillar Tractor Co. Peoria, Ill.	Retirement Income Plan	135207

A-174

37	Chase Manhattan Bank, N.A. New York, N.Y.	Employees' Thrift-Incentive Plan	072317
54	Chase Manhattan Bank, N.A. New York, N.Y.	Employees' Retirement and Family Benefit Plan	072019
26	Chrysler Corp. Highland Park, Mich.	U.A.W. Pension Plan	103654
87	Chrysler Corp. Detroit, Mich.	Thrift-Stock Ownership Program	103659
45	Commonwealth Edison Co. Chicago, Ill.	Service Annuity System	103473
89	Continental Oil Co. Houston, Texas	Retirement Plan	072391
50	Dow Chemical Co. Midland, Mich.	Employees' Retirement Plan	057310
6	Du Pont, E. I., De Nemours and Co. Wilmington, Del.	Pension and Retirement Plan	076924
49	Eastman Kodak Co. Rochester, N.Y.	Group Annuity and Insurance Plan	077937
57	Electrical Contractors Association, Inc. (National) Washington, D. C.	National Electrical Benefit Fund for The Electrical Contracting Industry	070025
75	Electrical Workers (International Brotherhood of) Washington, D. C.	I.B.E.W. Member Pension Plan	093835
69	Federated Department Stores, Inc. Cincinnati, Ohio	Retirement Income and Thrift Incentive Plan	045426

A-175

RANK	NAME OF PARENT CORP. AND LOCATION OF PRINCIPAL OFFICE OF PLAN	NAME OF PLAN	EP FILE
35	Firestone Tire and Rubber Co. Akron, Ohio	Non-Contributory Pension Plan and Retirement Plan	058366
84	First National City Bank New York, N.Y.	Retirement Plan	059403
11	Ford Motor Co. Dearborn, Mich.	General Retirement Plan	081549
12	Ford Motor Co. Dearborn, Mich.	UAW Retirement Plan	085810
25	Ford Motor Co. Dearborn, Mich.	Savings and Stock Investment Plan For Salaried Employees	086811
42	G.T.E. Service Corp. New York, N.Y.	Plan For Employees Pensions	039456
44	General Dynamics Corp. Saint Louis, Mo.	Retirement Plan For Salaried Employees	192266
3	General Electric Co. New York, N.Y.	Pension Plan	071167
19	General Electric Co. New York, N.Y.	Savings and Security Program	071793
4	General Motors Corp. Detroit, Mich.	Hourly-Rate Employees Pension Plan	038837
8	General Motors Corp. Detroit, Mich.	Retirement Program For Salaried Employes	050324
9	General Motors Corp. Detroit, Mich.	Savings-Stock Purchase Program For Salaried Employes in The United States	058438
40	Gulf Oil Corp. Pittsburgh, Pa.	Annuities and Benefits Plan	075192

A-176

RANK	NAME OF ORGANIZATION AND LOCATION OF PRINCIPAL OFFICE OF PLAN	NAME OF PLAN	NO. OF THE FUNDER
90	Gulf Oil Corp. Pittsburgh, Pa.	Contributory Retirement Plan	038419
83	Halliburton Co. and Otis Engineering Corp. Duncan, Okla.	Profit Sharing Plan	051420
27	Illinois Bell Telephone Co. Chicago, Ill.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	085723
47	Inland Steel Co. Chicago, Ill.	Past Service and Pension Plan	093454
13	International Business Machines Corp. Armonk, N.Y.	Retirement Plan	071415
67	International Harvester Co. Chicago, Ill.	Non-Contributory Retirement Plan	101650
86	International Harvester Co. Chicago, Ill.	Retirement Plan For Salaried Employes	247501
51	International Paper Co. New York, N.Y.	Employees' Retirement Plan	058865
48	Ladies Garment Workers Union (International) New York, N.Y.	I.L.G.W.U. National Retirement Fund	097523
96	Lilly, Eli, and Co. Indianapolis, Ind.	Lilly Retirement Plan	054523
33	Lockheed Aircraft Corp. Burbank, Calif.	Retirement Income Plan For Certain Salaried Employees	063913

RANK	NAME OF ORGANIZATION AND LOCATION OF PRINCIPAL OFFICE OF PLAN	NAME OF PLAN	PLAN NUMBER
85	Lockheed Aircraft Corp. Burbank, Calif.	Retirement Plan For Certain Hourly Employees	063019
77	Lockheed Aircraft Corp. Burbank, Calif.	Salaried Employee Savings Plan	199791
78	Maritime Union of America, AFL-CIO (National) New York, N.Y.	Pension Trust	014059
98	McDonnell Douglas Corp. Saint Louis, Mo.	Hourly Employees' Pension Plan (West Coast)	070940
54	McDonnell Douglas Corp. Saint Louis, Mo.	Salaried Employees' Retirement Income Plan	070941
62	McDonnell Douglas Corp. Saint Louis, Mo.	Salaried Employees' Savings Plan	163746
48	Michigan Bell Telephone Co. Detroit, Mich.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	050216
39	Mobil Oil Corp. New York, N.Y.	Retirement Plan	048821
63	Mobil Oil Corp. New York, N.Y.	Employees' Savings Plan	049123
65	Monsanto Co. Saint Louis, Mo.	Salaried Employes' Pension Plan	017540
94	Motorola Inc. Franklin Park, Ill.	Employees' Savings and Profit Sharing Fund	103525
59	Mountain States Telephone and Telegraph Co. Denver, Colo.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	037940

[illegible]	NAME OF ORGANIZATION AND LOCATION OF EACH OTHER NAME OF PLAN	NAME OF PLAN	[illegible] NUMBER
34	New England Telephone and Telegraph Co. Boston, Mass.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	068935
46	New Jersey Bell Telephone Co. Newark, N.J.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	087017
10	New York Telephone Co. New York, N.Y.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	053881
24	North American Rockwell Corp. El Segundo, Calif.	Retirement Plan For Salary and Weekly Payroll Employees	022477
61	Northwestern Bell Telephone Co. Omaha, Nebr.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	068990
58	Ohio Bell Telephone Co. Cleveland, Ohio	Plan For Employees' Pensions, Disability Benefits and Death Benefits	030478
80	Pacific Northwest Bell Telephone Co. Seattle, Washington	Plan For Employees' Pensions, Disability Benefits and Death Benefits	155146
14	Pacific Telephone and Telegraph Co. San Francisco, Calif.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	103133
55	Penn Central Transportation Co. Philadelphia, Pa.	Plan For Supplemental Pensions	047398
38	Penney, J. C., Co., Inc. New York, N.Y.	Penco Retirement Plan	074865

Rank	Name of Organization and Location of Principal Office of Plan	Name of Plan	10 Digit File Number
95	Philadelphia Electric Co. Philadelphia, Pa.	Service Annuity Plan	016453
71	Procter and Gamble Co. Cincinnati, Ohio	Profit-Sharing Trust Plan	056535
29	R.C.A. Corp. New York, N.Y.	Retirement Plan For Employees	067657
41	Republic Steel Corp. Cleveland, Ohio	Pension Plan	075338
1	Sears, Roebuck and Co. Chicago, Ill.	Savings and Profit Sharing Pension Fund of Employes	041080
100	Sears, Roebuck and Co. Chicago, Ill.	Supplemental Pension Plan	041031
17	Shell Oil Co. Houston, Texas	Shell Provident Fund	069810
22	Shell Oil Co. Houston, Texas	Pension Plan	069811
37	South Central Bell Telephone Co. Birmingham, Ala.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	223948
38	Southern Bell Telephone and Telegraph Co. Atlanta, Ga.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	070387
18	Southwestern Bell Telephone Co. Saint Louis, Mo.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	083024
60	Standard Oil Co. of Calif. San Francisco, Calif.	Stock Plan For Employees	027497

A-180

[illegible]	[illegible] OF INCORPORATION AND LOCATION OF PRINCIPAL OFFICE OF PLAN	[illegible] OF PLAN	WP FILE NUMBER
28	Standard Oil Co. of Calif. San Francisco, Calif.	Annuity Plan	056557
23	Standard Oil Co. (Ind.) Chicago, Ill.	Retirement Plan	049876
52	Standard Oil Co. (Ind.) Chicago, Ill.	Employees' Savings Plan	051455
7	Standard Oil Co. (N.J.) New York, N.Y.	Benefit Program	036261
64	Swift and Co. Chicago, Ill.	Pension Trust	068781
15	Teamsters (International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America: Central States, Southeast and Southwest Area) Chicago, Ill.	Pension Fund	110777
72	Texaco, Inc. New York, N.Y.	Employees Savings Plan	009635
53	Union Carbide Corp. New York, N.Y.	Non-Contributory Pension Plan For Employees	051563
2	United States Steel Corp. Pittsburgh, Pa.	Plan For Employee Pension Benefits	033658
5	Western Electric Co., Inc. New York, N.Y.	Plan For Employees' Pensions, Disability Benefits and Death Benefits	022956
16	Westinghouse Electric Corp. Pittsburgh, Pa.	Pension Plan	034570

3

APPLICATION FOR DISABILITY

UNDER THE

EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY

153-11 Jewel Avenue, Flushing, N. Y. 11365 — Room 307

RECEIVED APR 17 1972

Tel. No. 858-2921

Date 4/13/72

Name JUAN SANCHEZ LUGO Date of Birth 7/12/22

Address 185 NEVINS ST APT 3J City and State BROOKLYN, N.Y.

Last Employer MAJESTIC CORP How Long? 2 YRS

Previous Employer CHATAHAN METAL INC How Long? 7 YRS

Union Card No. BA-891668 F Occupation MACH-OPER

Nature of Disability DIABETIC Date Disability Occurred 5/67

How Sustained On Job UNDER CONTROL Outside UNDER CONTROL

Under Doctor's Care? YES Name E. RAMEJO SIMPSON, MD.

Name of Hospital Date Admitted Date Discharged

Have you received Hospitalization Benefits from this Fund ☐ Yes ☒ No

Nearest Relative VICTORIA SANCHEZ Address 185 NEVINS ST, BKLYN, N.Y.

This application is made pursuant to and subject to all the terms and conditions of the "EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY." The applicant agreed to submit to a medical and/or physical examination (the cost to be paid by the Fund) before this application is presented to the Trustees.

YOUR SIGNATURE MUST BE NOTARIZED

GUILLERMO TIRADO
Notary Public, State of New York
No. 24-9342654
Qualified in Bronx County
Commission Expires March 30, 1973

Sworn to before me, this 13 day of APRIL, 1972

Guillermo Tirado

Member's Signature Juan Sánchez Lugo

Address 196 Smith St, Bklyn N.Y.

DISPOSITION BY THE EMPLOYEES RETIREMENT FUND COMMITTEE

Date Presented 9-27-72 Action by Committee Denied

Payments Begin

Chairman

A-182

ANNUITY PLAN OF THE ILLUMINATION PRODUCTS INDUSTRY
158-11 JEWEL AVENUE
FLUSHING, NEW YORK 11365
ROOM 307 PHONE: (212) 591-1100

REFUND APPLICATION
(CEASED PARTICIPANTS)

DATE _____

I HEREBY APPLY FOR A REFUND ON EQUITY IN THE ANNUITY PLAN OF THE ILLUMINATION PRODUCTS INDUSTRY, 158-11 JEWEL AVENUE, FLUSHING, N.Y.

NAME Juan Sánchez Luga DIVISION B.P.E CARD NO. 99169

SOCIAL SECURITY NO. 581-34-9542 AGE 50 years 7/12/22

LAST EMPLOYED BY McTestic Metal DATE HIRED 3/9/76

REASON FOR LEAVING LAST EMPLOYER Because I'm sick

I am a Diabetic DATE TERMINATED 4/14/72

ARE YOU PRESENTLY EMPLOYED? ____ YES ____ NO ✓ CLASSIFICATION ____

IF YES, STATE NAME AND ADDRESS OF PRESENT EMPLOYER ____

I HEREBY STATE THAT I HAVE PERMANENTLY LEFT THE ANNUITY PLAN OF THE ILLUMINATION PRODUCTS INDUSTRY, 158-11 JEWEL AVENUE, FLUSHING, N.Y., AND DO NOT INTEND TO RETURN TO WORK IN SAID INDUSTRY AND HEREBY WAIVE ANY AND ALL BENEFITS TO WHICH A PARTICIPANT IS ENTITLED UNDER THE ANNUITY OF THE ILLUMINATION PRODUCTS INDUSTRY, 158-11 JEWEL AVENUE, FLUSHING, N.Y., EXCEPT THE PAYMENT TO ME OF MY EQUITY IN SAID ANNUITY PLAN OF THE ILLUMINATION PRODUCTS INDUSTRY, 158-11 JEWEL AVENUE, FLUSHING, N.Y.

SIGNATURE Juan Sánchez Luga

STREET & NO. Arecibo Puerto Rico

CITY & STATE Arecibo P.R. 00612

This is my new address

Arecibo Gardens

4 St. #0051

Arecibo, P.R. 00612

Please send me my Letters from now on

A-183

Local Union No. 3

International Brotherhood of Electrical Workers

OF GREATER NEW YORK AND VICINITY

OFFICE AND HEADQUARTERS

153-11 Jewel Avenue, Flushing, N. Y. 11365 Phone: 591-4000

AFFILIATED WITH
AFL-CIO

NEW YORK CITY
CENTRAL LABOR COUNCIL
AFL-CIO

BUILDING & CONSTRUCTION
TRADES COUNCIL
OF GREATER NEW YORK
AFL-CIO

AND ALL STATE AND
CENTRAL BODIES

Juan Sanez Hugo

Dear Member: BAF 891068

10/21

Our records show that your dues were last paid for the month of 6-30-72

Your membership stands to be lapsed if your account is not brought up to date before the end of this month.

Fraternally yours,
DUES DEPARTMENT

oeiu
153

A-184

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
P.O. BOX 2518, WASHINGTON, D.C. 20013

Dec 7 1973

REFER TO: HEA-2
581-24-9522

BUREAU OF
HEARINGS AND APPEALS

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Mr. Juan Sanchez-Lugo
185 Nevins Street
Brooklyn, New York 11217

Dear Mr. Sanchez-Lugo:

Your request for review of the administrative law judge's decision has been carefully considered by the Appeals Council. The Council's consideration of your request has included all the evidence in your case, the law and regulations applicable to your claim, the evaluation of the facts and the reasoning in this decision, and your reasons for believing your claim should be allowed.

The Appeals Council has concluded that this decision is correct. Further action by the Council would not, therefore, result in any change which would be of advantage to you. Accordingly, the administrative law judge's decision stands as the final decision of the Secretary in your case.

If you desire a review of the decision by a court, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from this date. See section 205(g) of the Social Security Act, as amended (section 405(g), Title 42, United States Code). If such action is commenced, the Secretary of Health, Education, and Welfare is the proper defendant.

Sincerely yours,

Member, Appeals Council

cc:
Mr. David S. Preminger
Attorney at Law
Brooklyn, New York 11201

A-185

IMPORTANT

DO NOT LOSE OR DESTROY THIS CARD

You must bring this card with you each time you come to the office or are called in about a job. It tells us where to find your experience record and will save you time. If you don't bring this card with you, you may have to wait much longer.

This card shows that you have filed an application for employment only. If you wish to apply for unemployment insurance or unemployment compensation for ex-servicemen ask the interviewer where to file a claim.

Notify us of any change of address or telephone number.

Applicants who claim veteran status but do not present proof must sign the following: I certify that I served in the Armed Forces of the United States during the period shown elsewhere in this application and that I was discharged under other than dishonorable conditions.

Witness _____ Signature _____

NEW YORK STATE DEPARTMENT OF LABOR
MANPOWER SERVICES DIVISION
NEW YORK STATE EMPLOYMENT SERVICE

PUBLIC EMPLOYMENT SERVICE
SERVICE FOR EVERYONE
LOCAL • STATE • NATIONAL

[illegible] OFFICE
[illegible] BEDFORD AVE.
BROOKLYN, N. Y. 11201

REPORT TO SECTION 7 3 FLOOR

APPLICANT CONTACT RECORD

IMPORTANT
READ AND NOTE CAREFULLY THE MESSAGE ON BACK OF THIS CARD

Name Jesus Sanchez (PLEASE PRINT)

Address 185 Nevins St. Apt 3F
Brooklyn NY 11217

SSA No. 581 24 9522

Occ. 1. Power Press Code 67.885

Occ. 2. ..... Code .....

Vet Status
☐ Veteran
Dates of Service From ____ To ____
☐ Disabled Veteran
☐ Non-Veteran

(SP) Status
140

ES 95 (11-72) (Over)

A-186

OFFICE OF PRIMARY APPLICATION				OFFICE OF ADDITIONAL APPLICATION			
SEC. NO.				ADDRESS		SEC. NO.	
DATE TO REPORT	DATE REPORTED	ACTION	INTERVIEWER	DATE TO REPORT	DATE REPORTED	ACTION	INTERVIEWER
	DI		-				
Wed - Dec. 19 - 1P.M.							

DEFENDANT'S EXHIBIT G 73 C 663

COMMENTS:

~~PLAINTIFF'S~~ DEFENDANT'S EXHIBIT C
FOR IDENTIFICATION
DATE 10-3-74
C.A.F.

A-1860(a)

IMPORTANT

DO NOT LOSE OR DESTROY THIS CARD

You must bring this card with you each time you come to the office or are called in about a job. It tells us where to find your experience record and will save you time. If you don't bring this card with you, you may have to wait much longer.

This card shows that you have filed an application for employment only. If you wish to apply for unemployment insurance or unemployment compensation for ex-servicemen ask the interviewer where to file a claim.

Notify us of any change of address or telephone number.

Applicants who claim veteran status but do not present proof must sign the following: I certify that I served in the Armed Forces of the United States during the period shown elsewhere in this application and that I was discharged under other than dishonorable conditions.

Witness _____ Signature _____

NEW YORK STATE DEPARTMENT OF LABOR
DIVISION OF EMPLOYMENT
NEW YORK STATE EMPLOYMENT SERVICE

INDUSTRIAL OFFICE
250 Schermerhorn Street
Brooklyn, New York 11201

TIME TO REPORT 8:30

REPORT TO SECTION 2 4 FLOOR

APPLICANT CONTACT RECORD LE

IMPORTANT
READ AND NOTE CAREFULLY THE MESSAGE ON BACK OF THIS CARD

Name Juan Sanchez (PLEASE PRINT)

Address 185 Navy St Apt 7
B'klyn N.Y.

SSA No. 582 42 9022

Occ. 1. A/C Operator Code 619.485

Occ. 2. ..... Code 070

Vet Status	SP Status
☐ Veteran	
Dates of Service From ____ To ____	190
☐ Disabled Veteran	
☒ Non-Veteran	

ES 95.3 (3-69) (Over)

A-187

OFFICE OF PRIMARY APPLICATION SEC. NO.		OFFICE OF ADDITIONAL APPLICATION ADDRESS _____ SEC. NO.	
DATE TO REPORT	DATE REPORTED	DATE TO REPORT	DATE REPORTED
		NOI.	
July	6 8 '45		
July 20			
July 4			
Aug 21		DI	
Sept 6	830	DI	
Sept 20		DI, N20	
Oct. 4		DI	
Oct 19		ADC	
Nov. 3			

DEFENDANT'S EXHIBIT D
73C663

Comments: _____

PLAINTIFF'S DEFENDANT'S EXHIBIT D
FOR IDENTIFICATION
DATE 10-3-74
C.A.F.

E. CAMEJO SIMPSON, M. D.
174 RIVINGTON STREET
NEW YORK, N. Y. 10002
PHONE (212) CA 8-6372

December 23, 1971.

Re: Juan Sanchez.
185 Nevins Street.
Brooklyn, N.Y.

To whom it may concern:

Mr. Sanchez is a patient at this office. He was found to have moderate elevation in his blood sugar. 278

Yours very truly,

Emily C. Simpson M.D.

E.C.S./ag.

A-188

CA 8-8378

E. CAMEJO SIMPSON, M. D.

Reg. No. 108268

174 RIVINGTON STREET

NEW YORK, N. Y. 10002

NAME Juan Saavedra AGE 49

ADDRESS 185 Avenue St DATE 5-22-72

℞ To whom it may concern

The aforenamed patient is being treated at this office for Diabetes Mellitus. He is on oral hypoglycemic medications.

His condition is fair

E. Simpson MD

MEDICAL DEPARTMENT

Pension Committee

Joint Industry Board of The Electrical Industry

MEDICAL HISTORY

Case 18203

Date 5-24-32

Name Sanchez, Luis Juan (Last) (First) Card No. BAE 89168

Address ..... Vet ☐ Non-Vet ☐

Tel. No. ..... Age 7/22/32 Sex M Color ..... Marital Status S M W D

S. S. No. 581-24-9522 Local No. #3 Employer Boston Metal

Family Doctor and Address E Campos Simpson 174 Remington St Bklyn NY

Nearest Relative Wife Victoria Address & Tel. No. Same

FAMILY HISTORY

T.B. ..... Diabetes ..... Ca. ..... Heart Disease ..... Mental Dis. ..... Obesity ..... Asthma ..... Hay Fever .....

PAST HISTORY

Childhood Diseases UD

Adult Diseases none

Operations (state date and hospital) denies

Injuries and Accidents (include industrial) denies

SYSTEMS (Use — for Negative, + for Positive)

HEAD: Headache + Dizziness — Eye Trouble + Ear Trouble — Sinusitis —

Mouth — Vertigo — Facial Palsy —

CHEST: Pulmonary Symp.: Cough — Pain — Frequent Colds — Sputum — Dyspnea —

Cardiac Symp.: Rheum. cycle — Anginal Syndrome — Palpitation + High B.P. —

Orthopnea — Cyanosis — Asthma — Adams Stokes Syndrome — Edema —

GASTRO-INTESTINAL: Appetite + Heartburn — Nausea — Belching — Pain —

Bowel Habits — Flatus — Jaundice — Bleeding —

Stool: Color — Deformity — Worms —

Weight (gain or loss) + Other

GENITO-URINARY: Frequency — Nocturia — Dysuria — Hematuria — Other

MUSCULO-SKELETAL: Pain — Stiffness — Low Back Syndrome — Other

ALLERGY: Hives — Hay Fever — Rash — Drug — Other

HABITS: Sleep 6 hrs Drugs FOR DIABETIC + NAT FACTORS Alcohol — Coffee + Smoking —

SKIN: Tone — Scars — Growths —

MENSTRUAL HISTORY: Onset ..... Cycle ..... Duration ..... Dysmenorrhea .....

OBSTETRICS: Grava ..... Para ..... Miscarriages ..... Others .....

PRESENT COMPLAINT

Pt referred for allowance of 278 mg %

also has Chest Pain 2° to Diabetes

For additional history use Progress Sheet A-190

50

PHYSICAL EXAMINATION

HEIGHT (w.o. shoes) 5 ft. 7 in. WEIGHT 153½ lbs. TEMP. ..... PULSE RATE 70

GENERAL APPEARANCE Well developed

EYES: Vision R. 20/ 20 L. 20/ 20 EARS: Wnl

NOSE: wnl

MOUTH: Teeth, Gums ok Mucous Membranes wnl Dental Caries: Yes ☐ No ☒

Throat, Tonsils ~~absent~~ present

THYROID GLAND: Palpable — Growths —

LYMPH NODES: CERV. — AX. — ING. —

THORAX:

Breasts — Chest Walls symmetrical

Nipples wnl Retraction — Discharge — Skin wnl

Heart and Circulatory Systems (heart size, rate, rhythm, murmurs) RRR S1 S2

Lungs: clear to P+A B.P. 140/85

ABDOMEN: (include scars) 5 scars

Liver wnl Spleen NP Kidneys NP

M. Rigidity — Tenderness — Hernia no

RECTUM: wnl

GENITO-URINARY: wnl

NERVOUS SYSTEM: Cranial

Tremors no Muscle Power ++ Coordination + Gait —

Reflexes — Argyll-Robertson — Rhomberg — Position —

EXTREMITIES: (include musculo-skeletal system) PMS ++ full ROM

no edema or effusion

Varicose Veins — Ulcers — Edema — Scars — Other —

IMPRESSION OF PATIENT'S PERSONALITY Cooperative

TENTATIVE DIAGNOSIS AND ADVICE:

Obesity Multiple

Dental & Retinopathy

DATE 5-24-72 SIGNATURE [signature]

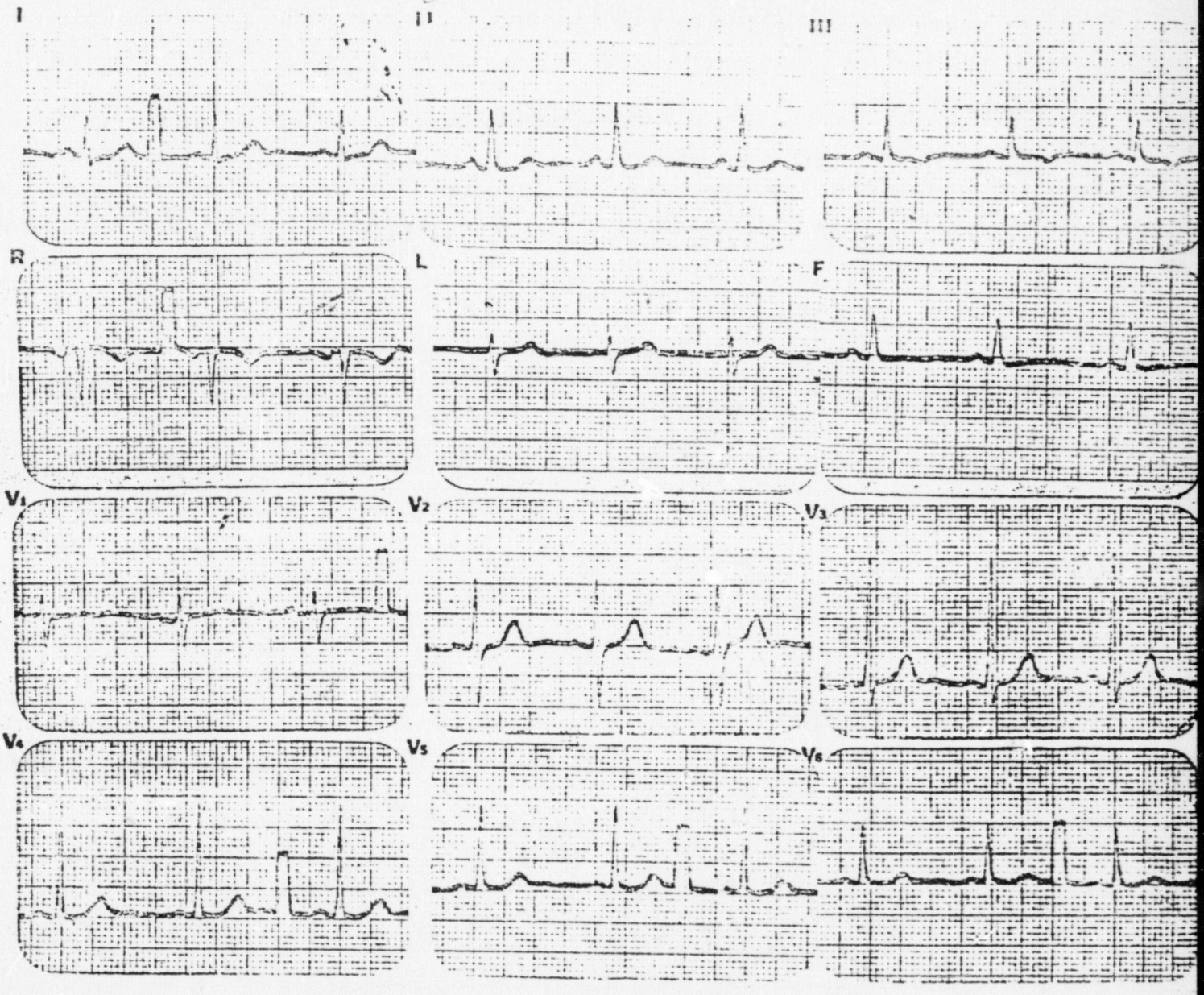
For any additional physical examination use Progress Sheet

A-191

N201 5M 7-71

MEDICAL DEPT. JOINT INDUSTRY BOARD OF ELECTRICAL INDUSTRY
158-11 Jewel Avenue, Flushing, New York 11365

NAME: Sanders, Regis CHART: F18203



Prev. ECG Yes ( ) No (X) WT 153 DIG ( ) QUIN ( ) AGE 50 SEX M BP 140/85 DATE MAY 24 1972

Ordered by [illegible] M.D.

Old Press - Blue tab.

ELECTROCARDIOGRAPH REPORT

Rhythm: Sinus (X) Other ( )

Rates: Atr. 75 Ventr. 75

Intervals: P-R .16 QRS .07 QTc

Axis: + Normal °

INTERPRETATION: [illegible]

WITHIN NORMAL LIMITS

A-192

Interpreted by [illegible]

MEDICAL DEPARTMENT

PENSION COMMITTEE

JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

"7L

SERVICE PAGE

Name Sanchez Lugo, Juan Case No. F-18703

DR. ELEC INDUSTRIE E008 1 E04

URINE ANALYSIS

05252442152O5

COLL. DT.	PH	SP. GRAV.	ALBUMIN	SUGAR
10 35	0	4+	2+	0

CASTS

WBC/HPF 1-2 CLUMPS /LPF 1

RBC/HPF

OTHER

BROOKLYN, NEW YORK 11215

MAY 27 72

Sanchez Lugo, Juan

PRINT PATIENT'S NAME and —

5-24-72 F-18703

PRINT DATE and —

KEY: NEGATIVE = 0
POSITIVE = 1, 2, 3, 4 PLUS

Janis Wanderman

DR. ELEC INDUSTRIE E008 1 E04

HEMATOLOGY SURVEY

05272462152O6 — LAB HEMA REPORT

HEMATOCRIT	HEMOGLOBIN	LEUKOCYTES	RBC	MCH	MCV	MCHC
47	16.0	6900	5.0	29	84	34
%	GRAMS %	PER CMM	MILLIONS	PMU	CU	%

BANDS	POLYS	LYMPHS	MONO	EOS	BASO
	64	30	3	3	
%	%	%	%	%	%

KINGS COUNTY RESPIRATION LABORATORIES
BROOKLYN, NEW YORK 11215

MAY 30 72

Sanchez Lugo, Juan REPORTED →

PRINT PATIENT'S NAME

F-18703

TREATMENT

Janis Wanderman

DR. ELEC INDUSTRIE E008 1 E04

DATE REC'D — LAB NUMBER

05272490100O7 — SEROLOGICAL EXAMINATIONS

BROOKLYN, NEW YORK 11215

MAY 30 72 NEGATIVE

PRINT PATIENT'S NAME and —

Sanchez Lugo, Juan

PRINT ADDRESS and —

F-18703

PRINT DATE and —

5/30/72 Janis Wanderman

M220 6M 3-72

A-193

MEDICAL DEPARTMENT

PENSION COMMITTEE

JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

SERVICE

PAGE

Name Sanchez Lugo

Case No.

ELEC IND E008

DATE RECD 05272 NUMBER 0101360 1

GTT fast

GLUCOSE	UREA N.	URIC ACID	CREATININE
330			
mgms %	mgms %	mgms %	mgms %

*PERFORMED ROUTINELY WHEN SUGAR IS 2+ AND ABOVE

MAY 31 '72

PRINT PATIENT'S NAME and —

Sanchez Lugo

PRINT DATE and —

5/27/72 F18203 Janis Wind

ELEC INDUSTRIE E008

DATE RECD 05272 NUMBER 4421510 9

SPEC. GRAV.	PH	PROTEIN	SUGAR	KETONES	BILE
1.026			4+	0	0

BROOKLYN, NEW YORK 11215

GTT fast

CASTS

WBC/HPF 1-2 CLUMPS /LPF

RBC/HPF

OTHER few Epithelials

MAY 30 '72

PRINT PATIENT'S NAME and —

Sanchez Lugo

PRINT DATE and —

5/27/72 F18203 Janis Wind

KEY: NEGATIVE = 0

POSITIVE = 1, 2, 3, 4 PLUS

DIRECTOR

ELEC IND E008

DATE RECD NUMBER

GLUCOSE	UREA N.	URIC ACID	CREATININE
360			
mgms %	mgms %	mgms %	mgms %

*PERFORMED ROUTINELY WHEN SUGAR IS 2+ AND ABOVE

GTT 1 hr

PRINT PATIENT'S NAME and —

Sanchez Lugo phone

PRINT DATE and —

F18203 6/1/72

ELEC INDUSTRIE E008

DATE RECD 05312 NUMBER 4421750 3

SPEC. GRAV.	PH	PROTEIN	SUGAR	KETONES	BILE
1.029			4+	0	0

BROOKLYN, NEW YORK 11215

URINE ANALYSIS

GTT 1 hr STAT Phone 597 8017

CASTS

WBC/HPF 0/1 CLUMPS /LPF

RBC/HPF

OTHER

JUN 2 '72

PRINT PATIENT'S NAME and —

Sanchez Lugo

PRINT DATE and —

5/31/72

KEY: NEGATIVE = 0

POSITIVE = 1, 2, 3, 4 PLUS

F18203 Janis Wind

DIRECTOR

ELEC IND E008

DATE RECD 05312 NUMBER 0101360 8

GLUCOSE	UREA N.	URIC ACID	CREATININE
325			
mgms %	mgms %	mgms %	mgms %

*PERFORMED ROUTINELY WHEN SUGAR IS 2+ AND ABOVE

GTT 2 hr

JUN 2 '72

PRINT PATIENT'S NAME and —

Sanchez Lugo

PRINT DATE and —

5/30/72 F18203 Janis Wind

DIRECTOR

05312 442151 6

ELEC INDUSTRIE E008

SPEC. GRAV.	PH	PROTEIN	SUGAR	KETONES	BILE
1.027		0	4+	0	0

BROOKLYN, NEW YORK 11215

GTT 2 hr

CASTS

WBC/HPF 0/1 CLUMPS /LPF

RBC/HPF

OTHER few Epithelials

JUN 2 '72

PRINT PATIENT'S NAME and —

Sanchez Lugo

PRINT DATE and —

5/30/72

KEY: NEGATIVE = 0

POSITIVE = 1, 2, 3, 4 PLUS

F18203 Janis Wind

DIRECTOR

MEDICAL DEPARTMENT

PENSION COMMITTEE

JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY

1772

SERVICE PAGE

Name Diego Sanchez Lugo Case No.

ELEC IND E008

DATE REC'D | NUMBER

0527 2 0101360 8

GTT

3h

GLUCOSE	UREA N.	URIC ACID	CREATININE
410		A	A
mgms %	mgms %	mgms %	mgms %

*PERFORMED AUTOMATICALLY WHEN SUGAR IS 25 AND ABOVE.

MAY 31 7

PRINT PATIENT'S NAME ↑ and →

Sanchez Lugo

PRINT DATE ↑ and →

5/29/72

BROOKLYN,

DIRECTOR

DR ELEC INDUSTRIE E008

DATE RECD | NUMBER

0527 2 4421513 3

GTT

3h

SPECIFIC GRAVITY	PH	ALBUMEN	SUGAR	CASTS	BILE
1026	6	0	4	0	0

BROOKLYN, NEW YORK 11215

PRINT PATIENT'S NAME ↑ and →

Sanchez Lugo

PRINT DATE ↑ and →

5/29/72

URINE ANALYSIS 1 E04

CASTS

WBC/HPF 1-2 CLUMPS /LPF

RBC/HPF

OTHER

MAY 30 '72

KEY: NEGATIVE = 0

POSITIVE = 1, 2, 3, 4 PLUS

DIRECTOR

M220 GM 3 72

A-195

Case No. F

PENSION, HOSPITALIZATION and BENEFIT PLAN
of the ELECTRICAL INDUSTRY
158-11 Jewel Avenue, Flushing, N. Y. 11365

EYE EXAMINATION

NAME: Lenga, [illegible] AGE: 52 DATE: 5/3/72

COMPLAINT:

V.A. OD c 2/25 Rx: OD 0.4. + 2.00 (D)
OS 20/25 OS add + 2.50 (N)

DISTANT Rx OD +2.00 = 2/25
OS +2.00 +0.50 X 180 = 2/25

READING Rx OD Add +2.00.
OS

TENSION OD OS APPLANATION

SCHIOTZ

PRESCRIBED Rx

DISTANT OD
OS

NEAR OD
OS

Returned on 6/3/72

DOCTOR: J Stavola

CONSULTATION – REASON:

5/3/72 Complains of frequent changes in eyeglasses -
Fundi. wl. Intraocular tension N.
Rec'd Rx upon in after diabetes
is stabilized for a 3-4 month period

A-176

A Wiles

M301 EM 7-71

MEDICAL DEPARTMENT • PENSION COMMITTEE
JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY
158-11 JEWEL AVENUE • FLUSHING, N.Y. 11365 • TEL. 591-2017

HON. ARMAND D'ANGELO
Chairman, Joint Industry Board of the Electrical Industry

• • •

Trustees
ALFRED P. MINERVINI
Chairman
GEORGE W. KLEINKNECHT
Treasurer
THOMAS VAN ARSDALE
Secretary
EDWARD J. CLEARY
Trustee

• • •

HON. ROBERT F. WAGNER
Public Member
HAROLD STERN
Counsel

• • •

Employer Representatives
JAMES ANDREWS
ALLEN D. FISCHBACH
ROBERT A. GOELLER, SR.
EFREM A. KAHN
THEODORE KAISH
GEORGE W. KLEINKNECHT
JOHN J. MARCATO
ANTHONY J. MELITA
ALFRED P. MINERVINI
HERBERT TIPPERMAN

Employee Representatives
JOSEPH CHALOUPKA
EDWARD J. CLEARY
HARRY J. GAVIN
JOHN KROMER
EDGAR MALONEY
FRANK MONTEMAGNO
CHRISTOPHER PLUNKETT
FREDERICK STEIN
HARRY VAN ARSDALE JR.
THOMAS VAN ARSDALE

WILLIAM T. KRIETE, M.D.
Director

June 22, 1972

Mr. H. Greenblatt, Exec. Sec'y.
Joint Industry Board of the
Manufacturing & Supply Industry
158-11 Jewel Avenue
Flushing, N.Y.

Re: Juan Sanchez Lugo
BAF891086

Dear Mr. Greenblatt:

The above was found to have diabetes as well as a visual disturbance which is correctable by glasses.

I do not consider this man disabled.

Very truly yours

W. T. Kriete, M.D.
Medical Director

WTK:pc

A-197

M207 2M 4-72

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO, Plaintiff, - against - THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, ET AL., Defendants.	PRE-TRIAL ORDER 73 Civ 663

It is hereby

ORDERED that for the trial in the above-captioned action, the parties' statements as to Federal Court jurisdiction are as follows:

PLAINTIFF

This Court has jurisdiction over plaintiff's claims pursuant to §302(e) of the Taft Hartley Act, 29 U.S.C. §186(e) and as set forth in this court's decision, reported at 366 F. Supp. 99(E.D.N.Y., 1973);

DEFENDANTS

Jurisdiction is in issue. This court has taken jurisdiction under §302(c)(5) of the Taft-Hartley Law. Judge Tyler held the contrary in DeLoraine v. MEBA Pension Trust, 72 Civ. 4427; the Second Circuit affirmed on other

grounds and avoided making a determination with respect to jurisdiction.

Furthermore, plaintiff concedes that the terms of the Pension Trust were not violated. Under such circumstances, Judge Lasker in Painters District Council No. 9 v. Rosen, D.C.N.Y. 1972, 72 Civ. 3021, held, "***there being no violation, the court either lacks jurisdiction or must grant summary judgment for the defendants."

It is further

ORDERED that the parties hereby acknowledge the truth of the following statements of facts:

FACTS

1. Plaintiff is 52 years old. He worked from 1955-1972 in the Illumination Products Industry and at all times while so employed was a member of the International Brotherhood of Electrical Workers Union, Local #3, New York City. As such, plaintiff was a participant in and beneficiary of the defendant Retirement Fund during this period.

2. The defendant Employees Retirement Fund of the Illumination Products Industry is a pension trust operating under the authority and requirements of §302(c)(5) of the Taft-Hartley Act, 29 U.S.C. §186(c)(5). Its principal office is located at 158-11 Jewel Avenue,

Flushing, New York.

3. The defendant, Charles F. Roth, is an assistant executive secretary of said Pension Trust Fund and is responsible for its administration.

4. The remaining defendants are all trustees of said Pension Trust and are responaible [sic] for its administration.

5. The defendant Retirement Fund provides two kinds of benefits, among others, (as set forth in the Collective Bargaining Agreement which established the Fund) namely: (a) The plan provides a standard pension (retirement) benefit for qualified participants. The requirements for this pension when plaintiff became a participant were that the applicant must be at least 60 years of age, have satisfied the service requirement in effect when he became a plan participant and have remained employed or been available for employment by contributing employers for at least 90 months in the ten years immediately preceding the filing of his application for benefits. If a person ceases to be employed or available for employment, participation ceases and if the person again becomes employed by a contributing employer, his participation commences as of the date of his re-employment and he has to meet the eligibility requirements then in effect for new participants; (b) The plan also provides

a disability pension. The requirements for this pension when plaintiff became a participant were that the applicant have been employed or been available for employment by contributing employers for at least ten years and have an aggregate of 90 months' (7 1/2 years) employment in the ten years immediately preceding the filing of an application for benefits. In addition, applicants are required to be permanently incapacitated or disabled "to such an extent that he or she can no longer secure gainful employment in the industry, or in any other line of business."

6. Determinations as to credited employment and as to disability are made by a joint retirement committee composed of union and employee representatives. According to the agreement creating the defendant plan, all decisions...of this committee are final and a rejected applicant has no right or claim of any kind against the committee, the union, or the employer, nor any right to either administrative or judicial review of such a decision.

7. Plaintiff acquired 195 months of credited service under the pension plan from 1955-1972.

8. In April 1972, plaintiff terminated his employment and on April 14, 1972, applied to the defendant Retirement Fund for a disability pension. This application was denied by the Joint Retirement Committee which found

that while the plaintiff had satisfied the plan's service requirements for a disability pension (see ¶5(b) above), on the basis of the medical evidence before the committee, the plaintiff was found not eligible.

9. The Joint Retirement Committee reached this decision at a meeting held on September 27, 1972.

(a) No written notice of this meeting was ever given to the plaintiff.

(b) Plaintiff was not present at the above meeting, was not invited to testify, call witnesses or present other evidence on his own behalf or to cross-examine adverse witnesses. There was no reviewable record and no written findings other than the medical reports and the trustees' conclusions as to eligibility, and the decision was not subject to judicial review under the plan regulations.

(c) The contents of the file upon which the defendant trustees determined that plaintiff was ineligible for a disability pension were two letters from plaintiff's physician (Dr. Simpson), a report of the retirement fund physician (Dr. Kriete) and the charts of the medical examinations accompanying this report and the trustees' own notation of decision ("denied - not eligible").

10. As to eligibility for a standard (retirement) pension, the plan requires that plaintiff would have to remain employed or available for employment by contributing

employers, attain age 60, and have an aggregate of 90 months' (7 1/2 years) employment in the ten years immediately preceding the filing of his application. If he ceases to be employed or available for employment (which plaintiff has) participation ceases and upon again becoming employed by a contributing employer (if ever) his participation would commence as of the date of his re-employment and he would have to meet the eligibility requirements then in effect for new participants.

11. Since the plaintiff's participation in the Retirement Fund has ceased, only upon again becoming employed by a contributing employer and meeting the eligibility requirements in effect at that time for new participants (currently twenty years' service) could he become eligible for a retirement pension.

12. After terminating his employment at Majestic Metals, plaintiff looked for work in New York City, reporting to the New York State Employment Service regularly for part-time work. He was classified as M/O Operator and as Power Press Operator. After each visit the State Employment Service directed plaintiff to return in two or three weeks.

13. Plaintiff applied for work to the Department of Labor in Arecibo, Puerto Rico. That office classified him pursuant to his own designation as a punch press operator.

14. The United States Department of Health, Education and Welfare, based upon examination by two physicians found that plaintiff's sugar count was not high enough to keep him from working and denied him disability benefits.

Plaintiff appealed from that decision and obtained a hearing. The Administrative Law Judge stated that the evidence before him indicated that plaintiff could perform such types of work as restaurant work, agricultural work or cleaning offices, performing light labor and rejected plaintiff's appeal.

Plaintiff's request for review of the Administrative Law Judge's Decision was rejected on December 7, 1973, by the Appeals Council.

15. Plaintiff's wife and children residing in Brooklyn, New York, receive support from the New York City Department of Welfare. These welfare checks are issued to plaintiff's wife.

16. The applicable Trust Agreement provides:

(a) That applicants for disability pension must submit to examination by the Fund's physician; and

(b) That the Trustees shall be the sole judges of whether or not applicants are disabled and that their determination shall be final and conclusive; and

(c) That eligibility for disability pension

is based upon permanent disability to engage in any occupation.

17. With respect to Lugo, the Trustees complied with every material provision of the Trust Agreement.

18. Lugo submitted to the Fund two letters from his personal physician, in which letters his physician does not state that he is disabled either totally or partially, either permanently or temporarily, either from engaging in his most recent occupation or in any other occupation. Lugo's physician did not state that Lugo had any "eye trouble."

19. Lugo ceased to pay union dues, despite being warned by the Union that he was delinquent in the payment of his union dues.

20. Lugo applied to his industry's Annuity Plan for the payment of the money credited to his equity account, and requested that payment be made to his address in Arecibo, Puerto Rico. These payments are payable when a participant leaves the industry, and they are being mailed to Lugo.

21. Lugo has not been found eligible for disability payments by the U.S. Social Security Administration.

It is further

ORDERED that the following are the sole issues of law and fact to be decided upon the trial of this matter as set forth by all parties hereto:

PLAINTIFF

1. Is a participant in a Taft-Hartley Pension Plan who files an application for disability benefits pursuant to that plan entitled to due process including a hearing upon timely and adequate written notice, at which the applicant is entitled to: an opportunity to testify and present evidence on his own behalf, including calling witnesses; an opportunity to cross-examine adverse witnesses; an impartial decision maker; a written decision including articulated findings of law and fact having a substantial basis in the record and judicial review?

2. Does this Court take pendant jurisdiction over plaintiff's claim that the trustees of the defendant Retirement Fund have violated their fiduciary duty to plaintiff by having decided plaintiff's claim for a disability pension without having afforded plaintiff a hearing as set forth in ¶1 above?

3. When plaintiff terminated his employment in April, 1972, did he have a good faith belief, and a reasonable medical basis for believing, that his diabetes and poor eyesight made it impossible for him to continue at his job?

4. Does the defendant Retirement Fund's rule, which requires that an employee work or be available for work in covered employment for at least 90 months in the 10 years

immediately preceding the filing of an application for retirement benefits (which may not be filed before the employee reaches at least age 60), violate §302(c)(5) of the Taft-Hartley Act in that said rule does not permit the defendant Retirement Fund to be operated for "the sole and exclusive benefit of the employees" as required by the Act?

(a) Does the rule disqualify participants with long periods of service or connection with the industry while including persons with much shorter periods of service?

(b) Does the rule exclude a large number of workers with no reasonable purpose?

(c) Does the rule take away benefits already earned because of some occurrence beyond the control of the worker?

(d) Is the eligibility structure remarkably atypical when compared to most other retirement plans?

5. Was the primary motivation of the trustees for promulgating the rule of 90/10 to induce experienced employees to remain in the industry by requiring them to remain in the industry for at least 90 months in the 10 years immediately preceding retirement, regardless of the amount of total service in the industry under the plan?

6. Is such a motivation unlawful under the requirements of §302(c)(5) of the Taft-Hartley Act?

7. Further, with respect to the issues of law set forth above, plaintiff respectfully refers the Court to its memorandum and reply memorandum in support of its prior motion for summary judgment.

DEFENDANTS

Contested Issue of Fact

1. Whether plaintiff was disabled as defined by defendants' Trust Agreement?

Contested Issues of Law (Other than Jurisdiction)

1. Whether plaintiff has standing to sue, in the event he was not disabled?

2. Whether this Court has jurisdiction to order any of the alterations in the Trust Agreement provisions demanded by the plaintiff?

It is hereby further

ORDERED that the following shall be the witnesses in the trial of this matter:

PLAINTIFF

Plaintiff's sole witness shall be the plaintiff himself, Juan Sanchez Lugo, 185 Nevins Street, Brooklyn, New York.

DEFENDANTS

Charles F. Roth, 158-11 Jewel Avenue, Flushing,

New York; Joseph Bono, 158-11 Jewel Avenue, Flushing, New York; W.J. Kriete, M.D.-Expert Witness, 158-11 Jewel Avenue, Flushing, New York; and John Sifre, 537 Sackett Street, Brooklyn, New York.

It is hereby further

ORDERED that the following shall be the exhibits which the parties shall offer into evidence at the trial of this matter: Objections thereto not being waived.

PLAINTIFF'S EXHIBITS

1. The collective bargaining agreement under which the defendant Retirement Fund operates, entered into September 23, 1970.

2. The annual report filed by the defendant Retirement Fund with the United States Department of Labor for the year ended April 30, 1973.

3. The actuarial valuation and review for the year ended April 30, 1970 (the last year for which such a report was done), prepared by Martin E. Segal & Company, consultants and actuaries.

4. A letter to plaintiff's attorney from defendant Roth dated April 5, 1973.

5. Sections 368.1 and 368.3 of Title 18 of the New York State Code of Rules and Regulations (N.Y.C.R.R.).

6. A survey by the United States Department of Labor of the 100 largest retirement plans, 1960-71, released January, 1973.

7. Defendant Retirement Fund's Plan Description (Regulations) dated 1970.

DEFENDANTS' EXHIBITS

A. Trust Agreement.

B. Plaintiff's application for disability pension.

C. Plaintiff's written application stating plaintiff was moving to Puerto Rico.

D. Union letter warning plaintiff of dues delinquency.

E. Action of Appeals Council on plaintiff's request for review.

F. Plaintiff's "applicant contact records" issues [sic] by New York State Employment Service.

G. Applicant contact records issued by Department of Labor of Arecibo, Puerto Rico.

SO ORDERED: October 7, 1974
Brooklyn, New York

JOHN R. BARTELS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO,

Plaintiff,

-against-

EMPLOYEES' RETIREMENT FUND,

Defendant.

73 C 653

United States Courthouse
Brooklyn, New York

October 21, 1974
10:00 o'clock a.m.

B e f o r e:

HONORABLE JOHN R. BARTELS, U.S.D.J.

SHELDON SILVERMAN
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID S. PREILINGER, ESQ.,
-and-
E. JUDSON JENNINGS, ESQ.,
Legal Services for Elderly Poor
2095 Broadway
New York, New York
Attorneys for Plaintiff

MENAGH, TRAINOR & ROTHFELD, ESQS.,
Attorneys for Defendant

BY: NORMAN ROTHFELD, ESQ.,
Of Counsel

MR. PREMINGER: I have the plaintiff's deposition.

THE COURT: Yes.

(Document handed to the Court.)

THE COURT: Gentlemen, let's have the evidence as you intend to submit it to the Court in connection with this case.

Let us understand what the issues are.

What do you say there, sir?

MR. PREMINGER: Your Honor, before I begin, I have my proposed exhibits here which I have labeled as Plaintiff's 1 through 7. I was wondering if they can be submitted now, have them marked as they are to be presented. There is one difference from the proposed exhibits in the pretrial order.

I have not submitted the regulations of the Department of Social Services but I have had the defendant's 1972 annual report in addition to the 1973 annual report.

THE COURT: You haven't answered my question.

MR. PREMINGER: I understand that.

I'm going to refer to these documents during my statement as to the issues.

THE COURT: Well, I don't care about that.

You still have to tell me what the issues are.

MR. PREMINGER: Your Honor --

THE COURT: Mr. Rochfeld, you better listen because you may have a different idea as to what the issues are.

MR. ROCHFELD: Yes.

MR. PREMINGER: Basically two issues are before the Court, your Honor: The first is whether or not the plaintiff, who is a participant in the defendant's retirement fund, the Taft-Hartley Pension, was, upon his application for disability pension from that fund, entitled to due process in order to determine his eligibility for disability pension.

The stipulation of facts which is set forth in the pretrial order already before the Court includes all the facts necessary to place this issue before the Court.

THE COURT: When did you send this thing in?

MR. PREMINGER: The pretrial order?

THE COURT: Yes.

MR. PREMINGER: I believe it was brought to your Honor on Thursday, last Thursday. That would be the 17th, I believe.

THE COURT: Have you signed it?

MR. ROSENBLUM: Yes, I did, your Honor.

THE COURT: All right.

MR. PREMINGER: Plaintiff maintains that the Taft-Hartley Act requires that the defendants afford him the due process hearing incorporating adequate written notice and opportunity to testify and present evidence on his own behalf including the calling of witnesses, and opportunity to cross-examine adverse witnesses and before an impartial decision maker, a written decision --

THE COURT: Yes, I understand, due process.

MR.PREMINGER: The defendants in paragraph 9 of the pretrial order admit that plaintiff was afforded none of this except the opportunity to submit a physician's report from his personal physician.

Defendants however, contend that the plaintiff is not entitled to any such hearing or due process.

THE COURT: Wait a minute.

I don't see that. I see on paragraph 10 as to eligibility for standard, the plan requires the plaintiff has to remain employed or eligible for employment by contributing, etcetera.

Is that what you are talking about? What does he agree -- what are you talking about?

MR. PREMINGER: Paragraph 3 where it says:

"The Joint Retirement Committee reached this decision at a meeting held"--

THE COURT: Wait a minute.

MR. PREMINGER: " -- of the statement of facts."

THE COURT: No written notice of the meeting was ever given.

I see. "Was not present at the above meeting."

Next? What else do you say?

MR. PREMINGER: The eligibility requirements and the rules and what the plaintiff has said are all set forth in Plaintiff's 1, 2 and 3, the collective bargaining agreement --

THE COURT: Don't talk so fast. You have a page you are reading from. He has to put it down.

MR. PREMINGER: -- and a letter fromthe defendant, Mr. Roth , stating --

THE COURT: Yes, Assistant Secretary, Pension Trust Fund is responsible for its administration, yes.

Really, most is considered in my original

decision. What is new here except the admissions by the defendant that he didn't give the notices and the notice of the hearing which you say plaintiff is entitled to and what else is in here that's new?

MR. PREMINGER: Nothing really new there, your Honor. It's basically the plaintiff claims on the facts set forth, he was entitled to due process and the defendant denies --

THE COURT: How about the eligibility requirements? They're already put in? They are also set forth in the trust agreement, right.

MR. PREMINGER: The eligibility requirements -- the trust agreement which is Plaintiff's 1 here was in 1970 and it basically states that you have to fulfull the eligibility requirements which in effect were at the time you became a participant.

Mr. Roth's letter classifies that and states what eligibility requirements were in effect when the plaintiff became a participant.

THE COURT: That's all in evidence. That was before me before, wasn't it?

MR. PREMINGER: Yes, your Honor.

THE COURT: What else have you got?

MR. PREMINGER: With respect to the claim for a hearing, that is all. The plaintiff intends to offer no further testimony on that, deeming that the Court can rule on this issue with the statement of fact and exhibits already before the--

THE COURT: Wait a minute.

MR. PREMINGER: And what have been marked for identification.

THE COURT: Now, you have his application for disability pension, written application stating he was moving to Puerto Rico. What has that to do with it?

MR. PREMINGER: The defendant wanted that, your Honor.

THE COURT: I've an annual report filed with the Retirement Fund and the United States Department of Labor for the year ended April 30th, 1973.

What has that got to do with it?

MR. PREMINGER: The Bureau of Labor Statistics.

THE COURT: April 30th, 1973.

MR. PREMINGER: The annual report.

THE COURT: Annual report.

MR. PREMINGER: That has to do with the

second issue, involving whether the Defendant's eligibility requirement for standard retirement pension is permissible under the Taft-Hartley Act.

THE COURT: Wait a minute.

You're running away here. I must know what you have in mind.

MR. PREMINGER: Yes, your Honor.

THE COURT: What relevance has the annual report filed by the Retirement Fund with the Department of Labor for April 30th, 1973 to this case?

MR. PREMINGER: One of the contentions is that considering the financial status of the Fund, its present financial status and that is what the annual report deals with --

THE COURT: I don't think that's relevant, is it?

MR. PREMINGER: Yes.

THE COURT: Why is that?

MR. PREMINGER: The 90/10 rule in dispute in this case is even more exclusionary and even more prohibitive.

THE COURT: The 90/10 rule, you mean the ninety months within ten years?

MR. PREMINGER: Right.

There was the second issue. I said two issues before the Court.

I completed the one with respect to the hearing. If I can just continue, I'll get to the issue of the rule --

THE COURT: The other is eligibility requirement.

MR. PREMINGER: Right.

THE COURT: Everyone admits it's 10/10. Why do you need a report?

MR. PREMINGER: We're maintaining that that rule is an impermissible requirement under the Taft-Hartley Act.

THE COURT: I know you are.

MR. PREMINGER: We maintain --

THE COURT: What's the report filed by the defendant have to do with it?

MR. PREMINGER: That report states the financial condition of the defendant fund. We maintain, considering the financial condition of the fund, and considering the ability of the fund to pay pensions, that this rule is overly exclusionary.

THE COURT: I can't follow that at all. I

don't see, with the financial ability of the fund has to do with the structural provisions of the fund.

MR. PREMINGER: This is a trust plan.

THE COURT: But this Court has no jurisdiction whatsoever to determine whether or not there has been a proper administration of the trust.

MR. PREMINGER: I'm not saying --

THE COURT: You don't need a financial condition to find out whether it's a structural defect.

MR. PREMINGER: I'm not asking this Court to go behind the plan and determine whether or not there has been anything, any wrongdoing with respect to finances.

THE COURT: What do I need the financial report for?

MR. PREMINGER: Your Honor the plan the trustees have a duty to be fair in the administration --

THE COURT: Now, you're talking about the administration. That's exactly what I say I'm not going to consider. Now, we're going to be right down the line, Mr. Preminger.

MR. PREMINGER: I understand that, your Honor.

THE COURT: As a matter of fact, I have grave doubts whether some of the statements I made in the original opinion of mine are valid.

MR. PREMINGER: If I may continue for one second, you stated in your original opinion with respect to defendant's motion to dismiss for failure to state a claim upon which relief is granted. This was reported in 36 Fed. Supplement 103:

"Defendants maintain that provisions in a trust fund which deny eligibility for retirement and disability benefits for allegedly arbitrary reasons to a substantial number of employees do not set forth the cause of action. With this contention we do not" --

THE COURT: I recall that. That's what is before me now.

MR. PREMINGER: That is correct.

THE COURT: What has the financial condition to do with Item C.

MR. PREMINGER: "Arbitrary conduct, on the part of the trustee which cannot be dismissed without evidence establishing a rational nexus between employee eligibility classifications and the trustees' conduct on the one hand and the objectives

of Section 3102(3) on the other hand."

Defendants in this case have offered absolutely no rational basis --

THE COURT: They're beginning to offer now. I don't understand yet --

MR. PREMINGER: One --

THE COURT: -- what the financial condition of the trust fund has to do with these issues.

MR. PREMINGER: Trust funds always set up--

THE COURT: I'm not going to argue this. I've listened to you talk. You haven't said anything but just the same thing. You've got to come up with a reason or else I'm going to tell you now I'm not going to consider it.

What is the reason?

MR. PREMINGER: Standard reason for eligibility requirements to maintain the fiscal integrity, to make sure the fund has sufficient funds --

THE COURT: That has nothing to do with structural defects.

MR. PREMINGER: If that's going to be --

THE COURT: How does that indicate that this trust agreement is not for the exclusive benefit of the employees?

MR. PREMINGER: Your Honor, I pretty much at least feel --

THE COURT: I got your argument. We'll take it up when you offer this evidence.

What else have you got? I just don't see it at all. I doubt whether I'll admit it into evidence.

Do you have anything further?

MR. PREMINGER: Yes, I do. Aside from the service requirements which are set forth --

THE COURT: You see, you're going all out beyond the jurisdiction of this Court. You may have quite a claim for misadministration which can be properly asserted in State Court, but this Court is not going to go into details of administration.

You ought to know that from the beginning. It might safe you a lot of time and effort.

MR. PREMINGER: Your Honor, courts have fashioned basically four tests --

THE COURT: Now, we're going into that with fashion remedies.

Mr. Preminger, what else have you got to say?

MR. PREMINGER: Your Honor, basically, what I just stated with respect to those issues, all set

[illegible] in the present order and --

THE COURT: Let me look at the complete document. A letter to the plaintiff's attorney from defendant Roth. I don't know what that has to do with it, with these issues here and the sections of Title 18 --

MR. PREMINGER: I'm not going to be offering those.

THE COURT: -- of the New York State Codes of Rules and Regulations.

A survey, United States Department of Labor of the 100 largest retirement plans released January 1973 -- acturarial valuation, for the year, 1970, prepared by Mr. Segal.

What has that to do with the case?

MR. PREMINGER: Your Honor, the three documents; the actuarial valuation, the two annual reports are not being submitted to the Court to show any misadministration on the part of the defendant fund. They are being offered to show the financial fund, a dramatic increase in the assets of the fund for a period of the past few years.

THE COURT: That could be shown in a lot of trust funds, those undoubtedly complying with

obscure. Assuming, however, there may be a relevant issue not as to exclusion or maybe it does include exclusion, as to whether or not there is an exclusion, and manoeuvered or unexplained exclusion of certain number of employees which in effect might constitute a structural defect so that one can say this plan was really formulated not for the sole exclusive benefit of the employees, but in some way or another, for the benefit of the employer or the union.

I don't know what the answer to that question is because I haven't heard the defendant yet.

I've heard you.

Now, let's see what Mr. Rothfeld has to say.

MR. ROTHFELD: Your Honor, our position is, very briefly, that unless the defendant -- I'm sorry, unless the plaintiff is found to have been disabled within the meaning of the trust agreement, he is not entitled to any remedies at all.

THE COURT: You see -- you and I discussed that at pretrial, too.

MR. ROTHFELD: I understand that, your Honor.

THE COURT: I think I took the position that

[illegible] before the Board was whether the eligibility requirements of [illegible] benefit plan is excluded large numbers of employees without any reason for it and, therefore, it was in violation of, I think, Section 305--

MR. ROTHFELD: 302(c).

THE COURT: You keep coming back as to whether this plaintiff was injured and that sort of thing. I don't know that this is the issue here. You will not go into the broad scope of your trust agreement and you seem to think as if the plaintiff was not disabled, that this Court has no jurisdiction.

Well, you are wrong on that. I've tried to point it out to you. You read these other opinions and that is not the issue because unless you say he has no standing to raise this question --

MR. ROTHFELD: That was my next point set forth in the pretrial order.

You say the plaintiff's written application is stating plaintiff was moving to Puerto Rico. A union letter warning plaintiff of dues delinquency, action of appeals counsel on plaintiff's request for review, and so on and so forth.

What's happening here, Mr. Rothfeld, and I tried to tell you that at the pretrial but you were not to agree with me and therefore, are going on your original package.

Well, that's up to you because what I see here is that you are not meeting the issues presented by Mr. Preminger and you're going one way, he's going another way and probably I'll go another way, too.

Anyway, you are not meeting the issue at all. If you are going to rely on just the issue as to whether this man is ill or not, I don't know whether that is going to be sufficient unless, as I said before, that he has no standing whatsoever to raise any objections to this plan because -- well, even if he's not injured, you have another problem of his standard retirement fund.

He's retired, isn't he?

MR. ROTHFELD: Your Honor, he is not working according to his statements. Whether he is retired or not, is in the mind of the plaintiff.

THE COURT: No, he claims he is entitled to retirement benefits, isn't that right, Mr. Preminger?

MR. PREMINGER: Your Honor, we have the complaint as to declaratory judgment that he will be entitled to retirement benefits.

THE COURT: You may not have any standing, Mr. Preminger, here at all. He's not entitled to them yet. I think that may be an issue as to whether this plaintiff has a right to bring any action at all.

Suppose he is not injured, suppose he is not disabled, Mr. Preminger? Has he got any standing?

MR. PREMINGER: With respect to which claim, your Honor.

THE COURT: Any claim.

MR. PREMINGER: If he is not disabled?

THE COURT: Yes.

MR. PREMINGER: Yes, your Honor.

THE COURT: What's the standing he has?

MR. PREMINGER: With respect to the claim for a hearing on the issue of disability, he is definitely entitled to the hearing once he puts in an application for a disability pension. He is a beneficiary --

THE COURT: Suppose he is absolutely well and

[illegible] just as healthy as you are, puts in a claim for disability, do you still think he has a right to a hearing in this case? That's not the situation here but I would take the position --

THE COURT: That's a hypothetical question.

Well, then what you say in effect is the mere lack of due process in this trust pension fund is a structural defect in violation of Section 302(c) of the Taft-Hartley Act; is that right?

MR. PREMINGER: That is correct.

THE COURT: That's really your main contention, I suppose, not necessarily, but certainly not yet entitled to any retirement benefits.

MR. PREMINGER: No, we didn't make that claim, your Honor.

THE COURT: So, we have to assume his request is predicated upon the fact he is disabled and under the agreement he was not given due process and because he wasn't, somehow or other, this lack of due process violates the Taft-Hartley Act.

MR. ROTHFELD: Might I have a minute?

THE COURT: Yes.

MR. ROTHFELD: Assuming arguendo only that the trust agreement is violative of Section

30225 and that Mr. Vago was entitled to a hearing which we deny, nevertheless, if he in fact was not disabled, then the hearing would have been meaningless.

He would not have been entitled to one penny in disability pension fund payments.

THE COURT: Is this a class action?

MR. PREMINGER: No, it is not.

THE COURT: You didn't bring as such?

MR. PREMINGER: No, your Honor.

THE COURT: Go ahead.

MR. ROTHFELD: So that, your Honor, this Court is not spending valuable time to grant rights which don't mean anything under the circumstances.

Now, it is quite clear that if the plaintiff were deprived of a million rights, but nevertheless was not entitled to a disability pension, then the deprivation of those rights have not deprived him of one penny's worth that's coming to him and our position is, your Honor, that regardless of what the trust fund did and we complained -- we contend that it acted properly but if it did not, so long as the plaintiff was not disabled, he was not entitled to a disability pension and therefore,

regardless of your Honor's argument about my putting the case before the house, your Honor cannot give him the remedy he seeks which is a declaratory judgment.

THE COURT: I don't think so have any authority to dothat anyway. The only point involved is the declaratory judgment as to whether or not the agreement violated the Taft-Hartley Act and if it did, then I think one would say the duty would be upon the trustees, I suppose, to redraw it, so that it complied with the Taft-Hartley Act but as to my granting right then and there any specific judgment for Mr. Lugo, I don't think that's in the cards.

MR. ROTHFELD: If your Honor --

THE COURT: I haven't read the complaint recently. Do you ask for a judgment in favor of Mr. Lugo?

MR. PREMINGER: We don't, your Honor.

THE COURT: Speak louder.

MR. PREMINGER: All we are asking for at this point, your Honor, he be granted the hearing.

THE COURT: Not before me?

MR. PREMINGER: No.

THE COURT: Before the trustees. That's

all he's asking for.

MR. ROMFELD: If your Honor --

THE COURT: I'm not going to give him in this court any disability pension one way or the other.

MR. ROMFELD: Your Honor, I would like the opportunity to prove Mr. Lugo was not disabled and therefore, is not entitled to anything at all.

THE COURT: That brings up the question whether the cart comes before the horse or not. I want you to show me some reasonable nexus between the provisions which are attacked here in order for me to determine whether or not there's been a structural defect.

In other words, why is this 90 within ten years justified. Why don't you have a hearing, of provisions, which provide for an opportunity for the employee to make his position known.

I don't say that necessarily at this stage that you must have such a provision or I'll have to know the reason why. I don't say that even -- if I'm not satisfied with the reason, that I'm yet ready to say that the lack of due process here is a structural defect, but that is what this hearing this

remain in all event. I understand she's true with respect to the 90 within 10 years. Let's have something on that. Let's not go back to where we were.

Are you ready?

MR. ROTHFELD: Might I have a moment?

THE COURT: Yes.

MR. ROTHFELD: If your Honor would please go one step ahead and consider what this hearing that plaintiff is asking for could possibly --

THE COURT: I don't believe that's necessary. If it's a defect of this kind and he's got standing, even though -- this is not a class suit, but if it were, all your arguments would seem to me would fall flat because it wouldn't depend upon this particular plaintiff's disability.

It would depend upon whether he represented a great number of others similarly situated and if he did, maybe he's not a proper representative of the class but that wouldn't mean that this Court would ignore the examination of the trust agreement.

Now, why don't you go along the way I've suggested, Mr. Rothfeld and see what you can establish but if you don't, I will have no alternative

but to say that you've made no efforts to follow the Court's suggestion.

Now, I'll take a fifteen minute recess. I would suggest you go along those lines. I indicated that to you at the pretrial agreement. You've come here this morning as though I didn't have a pretrial agreement. I'll go back.

You understand? Have you read my opinion?

MR. ROTHFELD: I read your opinion.

THE COURT: You paid no attention to it. You come back to the same position. This man has got to prove he's ill. This man has got to prove he's disabled. I'm not too sure that's right. I may be wrong. I'm not too sure I'm right either.

MR. ROTHFELD: Might I have a minute?

With respect to the 90 within ten rule, I don't believe within your Honor's opinion your Honor indicated that defendant was placed with any burden of justifying that 90/10 rule. I think the attack on it is frivolous. I will stand on that.

THE COURT: That shows no nexus whatsoever between the 90/10 rule and any rationality. You're just willing --- you're just going to say, "I must take your word for it it's reasonable," and go on

from there.

MR. ROTHFELD: No, your Honor. Your Honor is perfectly free. If your Honor does not want to spend a week listening to the plaintiff prove, that it's unreasonable.

THE COURT: I'm not too sure that's the way the proof is going to be cast. I think on its face, if it looks as though there is no nexus between the 90/10 rule and the retirement provision is that the purpose of the trust agreement; that is, for the benefit of the employees, then I think it's going to be a burden on your part to show that there is a benefit and there is a reason for it.

I don't know that's going to be hard but you just can't take this, I think, Mr. Rothfeld, if I may say so, somewhat inflexible approach when we have laid down to you at pretrial what we thought the issues are.

As far as I'm concerned, you have come back just with the same points, the issue for me to decide is whether this man is entitled to disability.

Now, you may be right.

MR. ROTHFELD: Might I have a moment?

THE COURT: But I don't think that's true at

MR. ROTHFELD: Might I have a minute?

THE COURT: If you want to concede that it's unreasonable, if you want to concede a lot of things here, that's up to you this morning.

Now, I've put this case down for trial and I must confess that you seem absolutely inflexible.

MR. ROTHFELD: Might I have two minutes, please.

THE COURT: Yes.

MR. ROTHFELD: With respect to the 90/10 rule, I think the plaintiff has not come forward with anything whatever to indicate that it is improper.

THE COURT: You said that before. It's the same.

MR. ROTHFELD: Lacking that, I think the burden remains on the plaintiff's side and does not shift. Now, with respect --

THE COURT: That's what you think. That may not be what I think. Why don't you make an effort to bring testimony in here on that point? I don't understand you, Mr. Rothfeld.

MR. ROTHFELD: I don't believe that I was

even make --

THE COURT: What's your next point?

MR. ROTHFELD: With respect to the hearing on the disability which plaintiff is asking for, the only thing that could happen --

THE COURT: He's not asking exactly for the hearing. Are you asking for a hearing right now on disability?

MR. PREMINGER: No.

MR. ROTHFELD: For the hearing the trustees may provide a hearing on the disability.

THE COURT: Are you asking for this Court to have a hearing?

MR. PREMINGER: Not on disability.

MR. ROTHFELD: I'm not saying that. I'm saying with respect to the hearing that the plaintiff is asking that the Court order the trustees --

THE COURT: You're going to say if it is established that the plaintiff is not disabled, therefore, that ends the case.

MR. ROTHFELD: I've said that.

THE COURT: You've said that a thousand times. I haven't agreed.

MR. ROTHFELD: I have something else on that

[illegible]

At this hearing, the only relevant evidence would be medical evidence.

THE COURT: At this hearing this morning.

MR. ROTHFELD: No, your Honor, at the other.

THE COURT: The other, yes.

MR. ROTHFELD: At the hearing the plaintiff is asking that the Court order, at such a hearing --

THE COURT: He's not exactly asking me to do that, as I understand it.

He is stating -- he is asking me to say that this trust agreement violates Section 302C5 of the Taft-Hartley Act. That's all.

If he's asking anything further, he's not going to get it. If it violates the Act, it will be declaration to that effect and that would be a restructural operation to see that it doesn't violate the Act.

I can't order a hearing. I would be redrawing your agreement. I'm not saying to you now that a hearing is absolutely necessary.

I don't know, but I'm asking you to show me why it's not necessary and why this is not a structural defect but I've never been able to get that

MR. ROTHFELD: In my offer of proof with respect to the procedures, which I will make, with respect to the medical procedures which the trustees medical department followed, my contention will be that that will obviate a hearing and that a hearing would be meaningless under those circumstances.

THE COURT: Then you say you are going to adduce evidence to show that it's not necessary to have a hearing.

MR. ROTHFELD: That would be, your Honor, with respect to the medical procedures.

THE COURT: Or any hearing, sure. You would show, you would offer proof to show it's not necessary.

MR. ROTHFELD: Yes, your Honor.

THE COURT: That there's no structural defect.

MR. ROTHFELD: Yes.

THE COURT: And I don't know how the 90/10 comes in, because -- are you claiming any 90/10 defect on the disability provisions?

MR. PREMINGER: No.

THE COURT: So the 90/10 defect, so called, is more or less the nature of the declaratory judgment.

MR. PREMINGER: That's correct.

THE COURT: I don't know why I should resort to that. So, you're really limited then to the one issue.

MR. PREMINGER: Excuse me, your Honor.

THE COURT: What do you have to say? Why should I when there's no controversy, declaratory judgments resorted to when there's a controversy.

I see no controvery at the present time. He's not reached that age. He can't comply with it.

MR. PREMINGER: The plan is already determined that he will not qualify for retirement pension.

THE COURT: If he were that age and about to do it -- he may die before he reaches that stage.

Therefore, there certainly wouldn't be any controvery.

MR.PREMINGER: I'll brief the points.

THE COURT: No, I've had enough on this case. I think I've read the law. I'll come back in fifteen minutes.

(Recess taken.)

THE COURT: How are we going to proceed? I think I've expressed myself sufficiently and we now will proceed with the plaintiff's case.

MR. PREMINGER: Your Honor, I would like to offer the documents which are marked for identification.

THE COURT: You have to speak louder.

What do you want to offer?

MR. PREMINGER: The documents already marked for identification. The first is the collective bargaining agreement.

THE COURT: First offer each one separately so we know exactly what the story is. Give Mr. Rothfeld an opportunity to object.

MR. PREMINGER: The first is the collective bargaining agreement under which the fund operates entered into September 23 --

THE COURT: Please speak up. I'm trying to help you.

You don't object to the bargaining agreement?

MR. ROTHFELD: If your Honor please, I believe this bargaining agreement is irrelevant but as a matter of policy I will not object to it.

THE COURT: Tell me why is it irrelevant? Isn't this the whole basis of your case, to wit:

Whether or not there's a pension fund to be provided for?

MR. ROTHFELD: I do not object.

THE COURT: How can you say it's irrelevant. It's a pension fund benefit? What is it?

MR. FEINBERG: It sets forth the requirements for all the pensions.

THE COURT: How is it irrelevant?

MR. ROTHFELD: If your Honor please, the collective bargaining agreement does not set forth the requirements, the trust agreement does.

THE COURT: I saw it here.

"There shall be ten types of benefits which shall be known as one, the standard pension benefits, the disability pension benefit..." and then it goes down and states what the standard pension benefit shall be, and disability pension benefits. I suppose it's the same as the actual trust agreement.

MR. ROTHFELD: In that respect --

THE COURT: Let me ask you this: Isn't it really the fountainhead for the trust agreement that it's the whole foundation for the trust agreement under the Taft-Hartley Act, isn't it?

MR. ROTHFELD: It is.

THE COURT: So you have to have it, don't you?

MR. POLLSTEIN: If your Honor deems it appropriate to have it, I do not object.

THE COURT: All right.

THE CLERK: Plaintiff's Exhibit 1, agreement dated 9/23/70 marked into evidence.

(So marked.)

THE COURT: What else?

MR. PREMINGER: Number 2, the booklet published by the defendant plan which is given to employees.

THE COURT: Don't talk so loud.

Now, I can't hear you at all.

MR. ROTHFELD: If your Honor please, I think this should more appropriately be marked Joint Exhibit.

I do not object either way.

THE COURT: Very well, we'll take it.

What's that supposed to be?

MR. PREMINGER: That's the booklet the plan publishes and gives to the employees to describe --

THE COURT: It describes the pension agreement. It is not the pensionagreement itself, is it? It's not the trust agreement.

MR. PREMINGER: No, it's not the trust agreement.

A-0244

MR. ROTHFELD: If your Honor please, it's (practically identical with the trust agreement and much more in handy form.

THE COURT: It's what you would call --

MR. ROTHFELD: Description of the pension plan.

THE CLERK: So marked as Plaintiff's Exhibit 2 in evidence.

(So marked.)

THE COURT: Make it Joint.

THE CLERK: Defendant Exhibit A.

(So marked.)

MR. PREMINGER: Number 3, your Honor, a letter from Mr. Roth, the Assistant Executive Secretary of the plan to myself which sets forth the requirement which Mr. Lugo had to fulfill and those he had fulfilled.

THE COURT: Who is Mr. Roth?

MR. ROTHFELD: Acting administrator of the fund. Again, if your Honor please, I don't see the relevancy to this case as I see it, but I have no objection.

THE COURT: It's the same provisions, I suppose, that the booklet comes in under which describes the

grant a moment.

MR. ROTHFELD: If your Honor please, it does make reference to requirements which are not in the joint exhibit in that those requirements were in effect when Mr. Lucio became a participant twenty years ago.

THE COURT: It says here that there's an attached letter of 6/22/72. I don't see that; yes, Mr. Preminger, is there such an attached letter?

MR. PREMINGER: There may not have been. I don't think it's pertinent.

I believe that letter was enclosed, your Honor.

THE COURT: Where is that letter, Mr. Rothfeld? It's a doctor's letter.

MR. ROTHFELD: If that is a letter by Dr. Kriete, which I will offer --

THE COURT: That's Kriete?

MR. PREMINGER: It doesn't say in there.

THE COURT: It says a letter dated 6/22/72. Is that your date?

MR. ROTHFELD: One moment, your Honor.

THE CLERK: Plaintiff's Exhibit 3, letter of Charles Roth dated April 5, 1973, marked in evidence.

(Continued)

THE COURT: What's next?

MR. PREMINGER: Fourth, the document published by the Bureau of Labor Statistics of the Department of Labor of the United States which is a survey of the 100 largest retirement --

THE COURT: Speak louder and more distinctly.

MR. PREMINGER: Survey of the 100 largest pension plans from 1966 through 1971. It is dated January 1973.

THE COURT: Do I see that here?

MR. PREMINGER: Number 6, in the proposed exhibits.

THE COURT: You object to that?

MR. ROTHFELD: I specifically object, your Honor.

First, we are not one of the 100 largest pension plans by a long shot and therefore, we are not described in this booklet and even if we were one of the 100 largest pension plans, I specifically submit that whatever other pension plans do is not in any respect binding upon the defendant plan.

THE COURT: What is it offered for?

MR. PREMINGER: Offered to show the 90/10 rule the plaintiff is attacking is highly atypical,

this is not included --

THE COURT: I won't take it now. I'll wait to see what other evidence you may offer to show whether or not the plaintiff is entitled to a pension at his present age.

THE CLERK: Plaintiff's Exhibit 4 marked for identification.

(So marked.)

THE COURT: He has to comply with two provisions: One, he has to be 66. The other, he has to work in 90 months within the ten year period, the two provisions, qualifications.

Now, if he hasn't reached the age of 66 and that's true in this case, then there's no point in talking about the 90 with ten eligibility requirement until you establish that by proof that employees should be entitled to pensions before they've reached 66 and all those -- and any provision of a trust agreement which excludes employees who have not yet reached 66 is a structural defect which indicates the trust agreement is not for the sole benefit of the employees.

Then, your survey is in my opinion irrelevant.

MR. PREMINGER: The age at which defendant's

plan affects public but are not attacked in this case.

THE COURT: I don't care whether it was or not. If this man is not 65, then there may not be any controversy to which would justify declaratory judgment.

MR. PREMINGER: It is plaintiff's contention that any participant of the Taft-Hartley pension plan is entitled to attack the provisions of that plan with respect to his eligibility for a pension--

THE COURT: I rule against you on that unless there's a controversy. I find between your plaintiff and this defendant then, of course, I can't issue a declaratory judgment.

Now, you can't come in here and say, representing someone who really is not at all affected by any defect in the plan and bring this action and if you're proposing that proposition for me, you will not get very far.

MR. PREMINGER: I'm not proposing that.

THE COURT: What are you proposing?

MR. PREMINGER: Your Honor, pension plans are accepted by employees as deferred wages, in lieu of present higher wages. They are not something

...ntage to grant annuity.

THE COURT: I know all that. That's all besides the point. You show me where or what theory you have a right, now, to attack this.

MR. PREMINGER: An employee, in order to gauge his future actions with respect to work or whatever, must know what his entitlement to pension will be.

THE COURT: Then you have the collective bargaining agreement to change it but you can't come here under Taft-Hartley violation because of certain provisions of the trust agreement that you don't like.

MR. PREMINGER: Your Honor, there's no reason why an employee whould have to wait until he reaches retirement age in order to determine whether or not he will be entitled --

THE COURT: Wait, what do you mean? If it says retirement age of 66 is required -- please wait.

MR. PREMINGER: I will wait.

THE COURT: Are you telling me that retirement age of 66 is a defect? Is that what you are saying?

MR. PREMINGER: That's not what we asserted.

THE COURT: What are you saying?

MR. PREMINGER: We're saying requiring an employee must work 90 months within the ten years immediately preceding the filing of an application for retirement benefits and that that application not be filed until age 66 --

THE COURT: And you say that violates the Taft-Hartley Act?

MR. PREMINGER: That's correct.

THE COURT: All right. Now, you represent someone who has not yet reached the age of 66; is that right?

MR. PREMINGER: That's correct.

THE COURT: Therefore, how can you attack it. You are not being deprived of anything yet, are you?

MR. PREMINGER: Your Honor, what I'm asserting is that --

THE COURT: Just tell me why.

MR. PREMINGER: Participant in a pension plan must be aware at all times of his rights in that pension and there's no reason --

THE COURT: Wait a minute, you mean just cos

in, anyone can come in right now, even though there's no real controversy, although he is not yet been shown in any way to have been deprived of any property interests or anything else; is that right?

That's a new theory, isn't it, that's what you call the Preminger theory.

MR. PREMINGER: No.

THE COURT: Give me one case to support that proposition.

MR. PREMINGER: If you would like me to brief this?

THE COURT: I don't want you to brief it because I don't think there's anything to that proposition at all.

Now, if you have -- if this man was 66 years of age and consequently was being deprived of a pension right because of the ten-year provision, then it would be your burden to show the 90 day within ten years provision is an unreasonable provision which amounts to a structural defect in-violative of the Taft-Hartley Act. No question about that.

But he hasn't yet reached the age of 66, so consequently, he can't complain about the 90 within

is no provision.

Now, he might contend there should not be any requirement that we reach 66. If that's what you are saying, I'll listen to your proof. If you are saying anything else than that, we are not going to proceed any further.

That's as clear as that because this is an application for declaratory judgment and to do that, we must show a controversy.

You will have no controversy unless you can show he has not -- he has been -- the provision for 66 years of age in an unreasonable one.

Next?

MR. PREMINGER: If that's your ruling, your Honor.

THE COURT: Do you want to show that, that it is?

MR. PREMINGER: We will attempt to show it, yes.

THE COURT: I'll listen to you right now.

MR. PREMINGER: I have three more.

THE COURT: Oh, yes.

MR. PREMINGER: The fifth is --

THE COURT: Let me say this to you: Let's

Read your complaint, Mr. Pennington.

You want a judgment declaring the refusal of defendant to award plaintiff disability or retirement benefits is unlawful and void.

I don't know if I can go that far. I'd probably say that a trust agreement is violative of the Taft-Hartley Act, 302(c) but to go further than that would be another issue.

In all events, it may amount to the same thing. Then, you ask for a final judgment enjoining the defendants to grant the plaintiff's application for disability or retirement benefits or in the alternative the defendant to establish procedures which would provide the plaintiff a full hearing with due process of law, the right to judicial review.

I think that's practically the same thing as your asking me to hold this agreement to be structurally defective, violation of the Taft-Hartley Act.

You don't ask for declaratory relief here at all.

MR. PENNINGTON: Enter final judgment declaring --

THE COURT: The refusal of the defendant to

[illegible] plaintiff disability but you don't ask for a judgment declaring that the trust agreement is structurally defective in violation of the Taft-Hartley Act.

This judgment is in Item 2, refers to the actual conduct of a trustee in refusing to award him.

MR. PREMINGER: The fourth claim for relief on the previous page, paragraph 7 --

THE COURT: We have another one.

MR. PREMINGER: Those are our claims for relief. The other one is the prayer for relief.

THE COURT: You only ask -- you don't ask for declaratory judgment. You ask for a judgment which would be an actual enforcible judgment, not one declaring rather than enforcing a provision of the trust agreement as being illegal.

You don't really ask for it, but I will consider this, this amendment and let you ask for it, a declaratory judgment, although you don't. Your theory was that the Court without more could simply find that this agreement was illegal, I think, because Mr. Lugo had not yet reached the age of 66 and to deprive him of the benefit of a pension before

that was illegal.

I think that's one of your provisions plus the 90/ within 10 years requirement.

All right, we'll -- I don't think you did ask for declaratory, but I'll assume that the complaint be deemed amended to include a request for declaratory judgment.

What's your next?

MR. PREMINGER: The plaintiff's fifth document is an actuarial valuation and review for the defendant pension plan, April 30th, 1970 prepared by Martin Segal & Company.

THE COURT: If you hold your head up I can hear you.

Now, say it again.

MR. PREMINGER: Plaintiff's Exhibit 5, actuarial valuation and review for the year ended April 30th, 1970, that is the last year in which such a report was done.

THE COURT: That's 3, isn't it?

MR. PREMINGER: I have renumbered.

THE COURT: I see.

MR. PREMINGER: This is No. 3 on the pretrial.

THE COURT: ... actuarial valuation of what?

MR. PREMINGER: Of the pension, the defendants' plan.

THE COURT: How is that going to prove it's a violation of the Taft-Hartley Act. Maybe it isn't the best plan. Maybe better plans could be promoted.

MR. PREMINGER: The actuarial valuation shows the assumptions that were taken into consideration in determining what pension could be paid and how much could be paid.

THE COURT: You're dragging me into an entirely different field, to wit: Is this a good plan, not whether it is such that it will exclude such a large number of employees for the benefit either of the employer or union that it structurally violates the Taft-Hartley Act.

MR. PREMINGER: What I'm saying is that there is no reasonable purpose for excluding participants under the 90/10 rule considering many aspects of the plan, one of which is the fact that the plan is going financially --

THE COURT: I won't allow that in unless we can have single years so that he can be examined and

cross-examine, and either objection be put in, that is an issue which I think, also, might not be before me but I wouldn't just take that if it were relevant. That would be hearsay. He would have a right to cross-examine, wouldn't he? Of course, he would.

MR. PREMINGER: It is a document.

THE COURT: I don't care what it is. A document. Just because it's a document you don't get it in. Because you write a letter to make it a document with a lot of hearsay would not permit it to be admissible, even if it's an expert.

Both of you understand that?

MR. JENNINGS: Mr. Rothfeld had waived his objections except for the relevancy. I think he intends to argue that.

THE COURT: I have to decide the case and it has to be decided properly.

MR. JENNINGS: This is a review prepared by the defendant, and provided in the course of pretrial discovery. If the Court wants to examine Mr. Sagal, we certainly have no objection to having him called. Our intention was merely to rely on the report itself.

THE COURT: What do you say?

MR. ROTHFELD: If your Honor please, I claim I don't raise the hearsay objection.

I do recognize that Martin Segal who prepared this report is an expert. I believe that this document is irrelevant to what is and should be before your Honor but as a matter of policy, so that there be no possible inference drawn that defendant seeks to withhold anything from the Court, if your Honor wishes to let it in, I will not object but I contest its relevancy.

THE COURT: Let me think out loud. You see, a case like this presents cert in difficulties which both parties must keep in mind; that is, I'm not here to pass upon the merits of this trust fund. I'm not here to say if it's a good or a bad plan and even if it's, relatively speaking, a bad plan, in the sense that a much better plan could be adduced, nevertheless, in all other respects, in every respect fail to violate the Taft-Hartley Act and if it does fail, then this is irrelevant.

Of course, I don't mind considering it to see whether there's any unreasonable exclusions but what is it going to prove? I mean you just offer it? Are you going to argue from it or what will I

conclude after I [illegible] that plan?

MR. PREMINGER: Your Honor, this plan and the next two documents which are the annual reports of the defendant plan --

THE COURT: Actuarial valuation, a letter to the plaintiff's attorneys, is that the next document?

MR. PREMINGER: I have renumbered these. I also eliminated one and added another.

THE COURT: With the consent --

MR. PREMINGER: I did not decide to do this until this weekend.

THE COURT: Do you know what a pretrial is for? You can't do that without the Court's permission.

MR. PREMINGER: I mentioned it on opening statement.

THE COURT: And the defendant's permission. Let's talk about your actuarial valuation. What's the next one you want to introduce into evidence?

A survey, United States Department of Labor, of the --

MR. PREMINGER: No. 4.

THE COURT: I don't care.

That's the one that you want to introduce to go with the actuarial valuation --

MR. PREMINGER: No.

THE COURT: You tell me.

MR. PREMINGER: Number 5 is the actuarial valuation. Number 6 is the annual reportof the defendant retirement fund.

THE COURT: Wait a minute.

That's the one you haven't put down there yet

MR. PREMINGER; This one has been put down, number two, on the pretrial order, your Honor.

THE CLERK: Retirement Fund booklet.

THE COURT: Annual report filed by the defendant --

MR. PREMINGER: April 30th, 1973. That is on the pretrial order, your Honor.

THE COURT: Yes.

MR. ROTHFELD: Again, I contest its relevancy but I will not make any objection because I don't want your Honor to feel --

THE COURT: Tell me what you're going to prove by these two documents, what you purport to prove.

MR. PREMINGER: Defendant in their brief

to opposition for summary judgment before this Court last June stated that among other things, one of the reasons for the promulgation of the rule of 90/10 was to make sure the industry could keep experienced employees working.

Immediately following that, they stated that based upon the 1970 actuarial valuation as opposed to the seemingly discontinuing the rule of the 90/10 they raised pensions from $75.00 a month to $100.00 a month based on the 1970 actuarial valuation.

That's a three and a third increase in pensions, your Honor. What we intend to show from the actuarial valuation, there are certain incorrect assumptions and on the basis of the annual report subsequently filed, there has been an incredibly dramatic increase in the funds of this plan which is really unexplained as far as I know.

I am not getting into mismanagement of the fund, your Honor. This is strictly with respect to there is no financial reason based on any of the financial documents which the defendant has that the rule of 90/10 would be necessary to maintain the fiscal integrity of the plan.

THE COURT: It doesn't have to be. It is a

reasonable reasons.

Whether it's a financial reason, if actually -- well, I don't know if there's any other reason why -- are you talking about 90/10. I'm not going into 90/10 unless you show this man is able to show there's a controversy as far as he's concerned.

I made that clear. You can put that -- number --

MR. PREMINGER: The annual report for the year ended April 30th, 1973.

THE COURT: What will that be?

MR. PREMINGER: No. 6.

THE COURT: That falls inthe same catagory as No. 5.

What you are asking me to do is go into this whole fund and redraw the pension trust agreement on some grounds that this court might think is equitable. I'm not going to do that. You might as well get that in your mind. Most of you generally have an idea that's going to be done and you're going to see what a terrible plan that is. That's not sufficient. The annual report filed with the U.S. Department of Labor for 1973, that, I think, that's 5 and 6.

Did you mark 1, 2, 3 and 4 in? I think you offered those in evidence. They were admitted into evidence, were they not?

MR. PREMINGER: No. 5.

THE COURT: 1, 2, 3 and 4.

MR. PREMINGER: They are all in.

THE COURT: 5 and 6 are not yet in.

THE CLERK: 4 and 5 are for identification. You said no.

THE COURT: Wait a minute.

MR. PREMINGER: 5, I have no intention of offering.

THE COURT: 1, 2, 3, 4 are in.

MR. PREMINGER: That is correct.

THE CLERK: Plaintiff's 4 marked in evidence.

(So marked.)

THE COURT: That's the 100 largest Retirement Plans.

MR. ROTHFELD: I have objected to that.

THE COURT: You have objected to it. I'll take it in and give it some weight as I think it deserves but it's admissible.

Now, the other two, you haven't offered yet.

Are you offering 5 or 6 yet?

MR. PREMINGER: No. 5 on the material order I'm not going to offer.

No. 6 was offered. That's the survey of the plans.

THE COURT: That's the survey -- wait a minute.

MR. PREMINGER: The confusion seems to arrive from the fact I renumbered.

THE COURT: What is No. 6? That's down on 2, isn't it?

MR. PREMINGER: That's right.

THE COURT: Annual report filed by the defendant Retirement Fund for the United States Department of Labor.

Do you object to that?

MR. ROTHFELD: I do, your Honor.

THE COURT: I'll take it for what it's worth. I don't know if I'll give much weight to it. It all depends upon whether it shows any exclusions in violation of the 302C5. It's up to you to show it.

Just by introducing it in evidence is not sufficient.

THE CLERK: Plaintiff's Exhibit 6, annual

report marked in evidence.

(So marked.)

MR. PREMINGER: This one was not listed in the pretrial order.

THE COURT: What is it?

MR. PREMINGER: The annual report of the plan for the previous year.

THE COURT: For '72.

MR. PREMINGER: '72.

THE COURT: You object to that.

MR. ROTHFELD: Just a minute, please, your Honor.

MR. ROTHFELD: Again, I contest its relevancy but I do not wish, for policy reasons, to take the posture of objecting to any report prepared by the plan.

THE COURT: I suppose that's for April 30th, 1972?

THE CLERK: Right.

THE COURT: I'll look at it.

THE CLERK: Plaintiff's Exhibit No. 7, report for period ending April 30th, 1972, marked in evidence.

(So marked.)

xxx

MR. PREMINGER: I'm ready to call the plaintiff.

THE COURT: What is he going to testify to?

MR. PREMINGER: As to when he left employment, the type of job that he did when he was employed, his condition, the fact that he had diabetes and visual impairment, the problems that caused with the job and the fact that was the reason for which he left his job.

THE COURT: Maybe they will stipulate.

MR. ROTHFELD: I will not stipulate to those things, your Honor. I don't believe the plaintiff is a medical doctor. I will certainly not stipulate as to the credibility of plaintiff. It's an issue.

THE COURT: I don't know, again, whether we are reaching an area which may be open to dispute, to wit: -- what's the purpose of this testimony.

MR. PREMINGER: Not to prove the plaintiff was disabled. We do not attempt to, intend to prove that today. What we are going to show is that the plaintiff was having certain problems with his job because of physical condition and that it was because of those reasons in a good faith belief

he could go looking perhaps what job, he left work.

THE COURT: I understand that really is not the basis for your objection to the plan. I think what you say is that the refusal of the amendment to give him a hearing violated due process; that the plan, therefore, violates Taft-Hartley Act.

I don't know in actuality the condition of the plaintiff is in issue because one can assume that he claims he's disabled and one could even assume -- well, I don't know what you could assume, but the one -- the point is whether or not he is disabled.

The point is did he have a proper hearing? I believe that's your claim.

Now, let's not go into a long harrangue of doctors, etcetera, to show whether he's disabled because we are getting off the track.

I believe that's one reason I was rather affirmative with Mr. Rothfeld, as I thought the medical situation was not involved here and at that time I thought you agreed.

MR. PREMINGER: I quite agree. The only reason we are going to do this was to show Mr. Lugo was not just attempting to get a hearing for the sake

of cattle. . hearing that he actually was having problems, that he couldn't perform his job; had a good faith belief he could no longer perform it and left.

If your Honor deems that is not necessary --

THE COURT: I'll take it for what it's worth. It's not an injury. I can listen to it.

MR. FREMINGER: Fine.

We're going to need an interpreter. I have a letter of introduction from Mr. Lopez.

MR. ROTHFELD: If your Honor please, Mr. Lugo worked or lived in this country for twenty years. I am not prepared to stipulate --

THE COURT: Wait a minute. You and I want to hear the facts. We don't want to rely on technicalities. I could ask our clerk downstairs, if the interpreter could come up.

THE CLERK: Mr. Rodrigues is in Judge Mishler's courtroom, in a civil case. The clerk is not supposed to supply them.

THE COURT: I know that. We might ask him to just stay in here, maybe for ten or fifteen minutes to see if the interpretation of Mr. Lopez is correct.

MR. ROTHFELD: If your Honor please, I'm not asking --

THE COURT: Wait.

MR. ROTHFELD: I'm not asking for that, your Honor. I'm asking the need for an interpreter at all.

THE COURT: I know you are, but why should we question it if we can get the information through an interpreter or without an interpreter?

Is Mr. Lopez here?

MR. PREMINGER: Yes.

MR. ROTHFELD: I'll defer to your Honor.

THE COURT: Come up, Mr. Lopez.

(Mr. Lopez approaches the bench.

THE COURT: Swear Mr. Lopez.

(Whereupon, Michael Lopez, a Spanish- English Interpreter was duly sworn by the Clerk of the Court.)

THE COURT: Where do you work?

THE INTERPRETER: Giles International Services. I'm the manager of the office.

THE COURT: What do they do?

THE INTERPRETER: General line of business is providing interpreters and doing general translations.

THE COURT: What is your background in Spanish, in your ability to interpret Spanish into English?

MR. LOPEZ: I was born in a Spanish-speaking country, in Paraguay. I was raised there until I was about fifteen years old. The language we speak at home is Spanish.

THE COURT: Where you raised --

MR. LOPEZ: Until I was about fifteen. Then I came to New York. Even after coming to New York we did speak Spanish in the house.

My minor at college was Spanish literature and I do interpretations for Mr. Giles in Spanish.

THE COURT: Have you appeardd in Court as an interpreter?

MR. LOPEZ: I have one Federal Court appearance to my name before Judge Metzler, the Southern District.

THE COURT: I understand that Mr. Lugo can also speak and understand English, is that true?

MR. PREMINGER: Your Honor, according to my understanding of the situation, your Honor, he understands some English. He does not converse will at all.

THE COURT: Mr. Lopez, may I have you act as interpreter.

Call Mr. Lugo, please.

THE CLERK: Please take the stand and state your name for the record and please spell it.

THE WITNESS: Juan Sanchez Lugo, L-u-g-o.

J U A N S A N C H E Z L U G O , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: Mr. Lopez, you may tell him if he wishes any time to answer in English, he may do so.

THE WITNESS: I don't understand much.

THE COURT: All right. Proceed.

DIRECT EXAMINATION

BY MR. PREMINGER:

Q Mr. Lugo, are you presently working?

A No.

Q When did you last work?

A April 14, 1972.

Q Where were you working at that time?

A Majestic , Inc..

THE COURT: What kind of company is that?

A-272

THE WITNESS: It's a metals company.

THE COURT: Where is it located?

THE WITNESS: 535 Sackett Street, Brooklyn, New York.

THE COURT: How long have you worked there?

THE WITNESS: Two years.

THE COURT: Wheredid you work before?

THE WITNESS: I worked in New York at Chitham Metals.

BY MR. PREMINGER:

Q Where is that located?

A 128 Mott Street, New York.

THE COURT: How long have you worked there?

THE WITNESS: Seven and a half years.

THE COURT: Where did you work before that?

THE WITNESS: I worked at Cropsey Avenue, Coney Island.

THE COURT: What's the name of the company?

THE WITNESS: Lececor.

THE COURT: All metal companies, Chatham and this was a metal company, too, right?

THE WITNESS: All of them, yes.

THE COURT: How long did you work there?

THE WITNESS: Also seven and a half years.

THE COURT: Where did you work before that?

THE WITNESS: I don't remember. I don't remember.

THE COURT: All right, that's seventeen years. That's what we're talking about. What did you do at those companies?

THE WITNESS: Lamp parts.

THE COURT: Made of what kind of metal?

THE WITNESS: The white metal and that metal that they call copper and aluminum.

THE COURT: I'm sorry I interrupted you, Mr. Preminger.

MR. PREMINGER: That's quite all right, your Honor.

THE COURT: That I took over for you.

BY MR. PREMINGER:

Q Mr. Lugo, would you please describe in as much detail the type of work you did at Majestic?

THE COURT: Can I interrupt you, please.

Why don't you ask him the type of work he did, if it's all the same type.

MR. PREMINGER: I don't know if the job is specifically the same in all three.

THE COURT: But he worked with metals;

[illegible] copper and what other metals? That's all you need to qualify him as a member of this union?

Isn't that right, Mr. Rochelle?

MR. PREMINGER: It's not a question of qualifying as a member of the union. That's stipulated to in the fact.

What I'm trying to do is establish the type of work he did at his last job, what his problems with that job were.

THE COURT: All right.

I thought you talked about the first job or the second job.

Are you talking about --

MR. PREMINGER: The final job at Majestic.

THE COURT: Very well.

Ask him again.

BY MR. PREMINGER:

Q Would you describe in as much detail the work you did at Majestic.

A I had to take the rolls of metals which at times weighed as much as 500 and 600 pounds --

THE COURT: How much?

THE WITNESS: Five or six hundred pounds.

THE COURT: You picked up?

THE WITNESS: With a chain.

THE COURT: You picked them up?

THE WITNESS: I picked them up to take them to an electric saw and I were them and I cut them with a machine.

BY MR. PREMINGER:

Q How did the machine work how was it operated?

A That machine was foot operated. It operated when I put my foot down. I had to work like this (demonstrating). There was this piece that was very close to my finger and I had to work with ten or fifteen rolls a week. That should have taken me a week. Sometimes it took some more time.

Q Mr. Lugo, when you operated the machine, did you cut metal with it?

A Yes, I cut the metals with it and there was a fragment of metal remaining which I had to pick up and throw it in the drum.

Q When the machine cut the metal, did you have to hold the metal piece being cut?

A Yes.

(continued next page.)

Rosa fl-1.

DIRECT EXAMINATION

BY MR. PRESSLEIGH (Cont'd):

Q Mr. Lugo, when you cut the metal, how close did the blade come to your hands when you were holding the metal?

A Sometimes as close as three.

Q Mr. Lugo, you stated that you left this job in April of 1972.

Why did you leave?

A Because my physical condition didn't permit me to work.

Q What problems were you having with your health?

MR. ROTHFELD: If your Honor please, it may be a close question but I think I should object on the grounds --

THE COURT: To what?

MR. ROTHFELD: --I do object.

THE COURT: About the last question or the preceding question?

MR. ROTHFELD: The last question on the ground the witness is not competent to answer that question.

THE COURT: Repeat the question, please.

MR. PRESSLEIGH: The question was what problems was the witness having with his health at the time.

THE COURT: He can testify to that, what problems he has. It's, of course, subjective opinion, but I think he's a good witness to say if he suffered pain and this and that.

I can't imagine any better witness, can you?

Certainly, when you have a negligence action, the plaintiff gets on the stand and testifies as to the injuries he sustained.

I think this is somewhat in the same category, don't you think so?

MR. ROTHFELD: Not quite.

The question related to health.

THE COURT: That's health. He wants to say how he feels, what problems he has. He could be psychosomatic.

MR. ROTHFELD: It could very well be.

THE COURT: That's a matter of weight we attach to it.

It isn't necessarily inadmissible. I think it is definitely admissible.

THE WITNESS: I had diabetes. It was rather a strong case of it and it affected my sight. I was also dizzy.

MR. ROTHFELD: I move to strike the witness's

Lugo already knows his rights, I think, of direct on the grounds he is not competent to testify to this.

THE COURT: I think you can cross-examine him on that. I'll permit it.

BY MR. PREMINGER:

Q Mr. Lugo, what effect did these conditions have --

THE COURT: He said it affected his eyesight and that he was dizzy.

MR. PREMINGER: I want to know what effect the conditions had on Mr. Lugo's ability to do his job.

THE COURT: Ask him the question, please.

THE WITNESS: In the first place, in the physical condition which I was, the work was rather strenuous.

The second place, it affected my eyesight. I was supplaced to work with a clock that counted the number of pieces that I was turning out. I wasn't able to see it very well. As a result I had to call the foreman so that he could see the number of pieces I had turned out.

I felt dizzy repeatedly so I had to the time out to go to the toilet until I felt better. I was

also extremely nervous because the doctor had warned me if I cut my fingers, I could get a gangrene and since I had to work with these blades at such close distances, I was nervous most of the time.

MR. ROTHFELD: I move to strike that hearsay about gangrene.

THE COURT: I'll take it for what it is worth.

Let's go on to ascertain his state of mind.

BY MR. PREMINGER:

Q Did your problems with vision cause any problems when you had to cut the metal items?

THE COURT: Yes. He said he had to watch the clock and he couldn't see how many pieces he cut and therefore called the foreman.

MR. PREMINGER: I wanted to know any other problems with the actual cutting.

THE COURT: All right, ask him.

(Interpreter complies.)

THE WITNESS: Yes, there were quite a number of pieces that due to my condition, I was turning out scratched and depending upon how the metals were actually cut, the pieces were or were not scratched, and the fact that I was turning out many pieces that were scratched was causing me problems with

by supervisors.

THE COURT: Other problems with vision?

THE INTERPRETER: Supervisors.

THE COURT: All right.

BY MR. PREMINGER:

Q Was it the case, Mr. Lugo, you could not see the scratches?

MR. ROTHFELD: Objection, leading, if your Honor please.

THE COURT: No, I will permit it.

Could you see the scratches?

THE WITNESS: Sometimes the boss would usually come and look at some of my work and see that some of the pieces were damaged that I hadn't seen.

Q Mr. Lugo, when did you first start having problems with your eyes?

A Since I had diabetes.

Q When was that?

MR. ROTHFELD: Objection with respect to diabetes. He's not a physician.

THE COURT: I'll permit it.

Q When was that?

THE COURT: You can find out on cross-examination. He had problems with his eyes, when?

THE WITNESS: Between '67 and '68 then I

have had diabetes.

MR. ROTHFELD: Specifically move to strike

that.

THE COURT: No.

BY MR. DRUMMOND:

Q Prior to that, Mr. Lugo, did you wear glasses?

A No.

Q Has your condition with respect to your eyes or any other way gotten worse --

THE COURT: Wait a minute --

MR. ROTHFELD: I object. Might I have a continuing objection?

THE COURT: To the whole line of questioning, that's right.

A Yes, even to this date, I'm almost blind.

THE COURT: Well, no --

MR. ROTHFELD: Specifically move to strike.

THE COURT: That's a conclusion. I'll strike that. I didn't see any indication that he's almost blind. He walked up and down here from his seat in the audience to here, to the chair (indicating).

If he has any doctors he wants to put on the stand to indicate he's almost blind, that's another

Q Is it true, Mr. Lugo -- Mr. Lugo, your employer through your steward, Juan Sifre, asked you not to leave your job but to stay at work?

A No.

Q Is it true, Mr. Lugo, that months after you left your work, Mr. Juan Sifre asked through your wife, you come back to work?

A Yes.

Q Now, Mr. Lugo, after you quit your job in April, did you visit the employment office of the New York State Department of Labor in Brooklyn, New York about a dozen times looking for work?

MR. PREMINGER: Objection.

THE COURT: No, I'll permit it. Go ahead.

A Yes.

Q Did those visits continue until October 1972?

A Yes, I was obligated to go there by Welfare which was -- by the Welfare Department that got the appointments for me.

Q Mr. Lugo, in October of 1972, were you

examined, medically, by Dr. Bark upon behalf of the Aetna Casualty Company?

MR. PREMINGER: Objection.

THE COURT: I don't get the connection with Aetna Casualty.

MR. ROTHFELD: Might I lay a foundation?

THE COURT: All right.

BY MR. ROTHFELD:

Q Mr. Lugo, do you know whether the insurance carrier which was obligated to pay weekly unemployment checks after you left work was the Aetna Life & Casualty Company at 151 William Street, New York City?

MR. PREMINGER: Objection.

THE COURT: He can ask if he knew it.

MR. PREMINGER: Excuse me?

THE COURT: No, overruled.

A yes, that was it.

Q No.

Now, on October 17th, 1972, were you examined medically by Dr. Bark -- I'm sorry.

A I don't remember.

Q On or about October 26th, 1972, did you receive a letter from Aetna Casualty Company stating that --

MR. PREMINGER: Objection.

THE COURT: What date is this?

MR. ROTHFELD: On or about October 26th, 1972.

THE COURT: What's the basis of your objection--

MR. ROTHFELD: I haven't finished my question, your Honor.

THE COURT: Very well.

While I'm a Judge and not sitting as a jury, I don't want you to bring to my attention the contents of a letter which might not otherwise be admissible. At least don't do it before I've ruled on the admissibility.

I assume, Mr. Premenger, it's as a result of an examination made by Dr. Berk with, perhaps, I mean, even a jury can assume that if you object to it, indicates that he could work.

I suppose something like that. Now, what's your objection to that?

MR. PREMENGER: It's mere hearsay.

THE COURT: I would say since you opened the door with respect to his condition, and he's ready to testify as to whether he had diabetes which is predicated upon the hearsay of a doctor who examined him because he's not a doctor, I'll permit this.

MR. ROTHFELD: I don't recall, Your Honor, that the plaintiff had diabetes and I wasn't sure to what condition you took that testimony. The fact remains he believed he had diabetes.

THE COURT: He couldn't believe it unless someone told him.

MR.PRYMINGER: That's correct.

THE COURT: I'll permit it.

Overruled. Let's proceed.

BY MR. ROTHFELD:

Q Mr. Lugo, --

THE COURT: I think it's relevant.

Q Mr. Lugo --

THE COURT: He went there, admits he was examined by this doctor, doesn't he?

MR. PRYMINGER: Yes.

Q On or about October 26th, 1972, did you receive a letter from Aetna Life & Casualty Company stating that according to medical inspection by Dr. Bark on October 17th, 1972, you were not disabled?

THE COURT: Well, I won't take that as the best evidence.

If you're going to introduce that in evidence, offer this evidence and show it to

MR. ROTHFELD: It's not on my list. I got it last week. Perhaps if the question --

THE COURT: I thought I got that impression at the pretrial there was some sort of statement.

MR. ROTHFELD: I hadn't received it at that time.

THE COURT: I'm wondering if I'm correct in my memory. Didn't you say that at pretrial there was such a letter?

MR. PREMINGER: I believe at pretrial that was the doctor's letter referred to, the fund's position.

MR. ROTHFELD: I have other letters.

THE COURT: Of the fund?

MR. ROTHFELD: The trust fund, not his position.

THE COURT: Of course, as I told you, I question the relevancy of all of this,

No, have you got the letter?

MR. ROTHFELD: Yes, your Honor.

THE COURT: Let's see it. Maybe it isn't as favorable as you say. You seem so have reluctance in offering it. Let's show it to Mr. Preminger.

MR. PREMINGER: I'll withdraw it.

THE COURT: Withdraw the whole question?

MR. ROTHFELD: Yes.

THE COURT: Then I think you ought to see the letter. Just a moment, please.

(Said document handed to Mr. Preminger and to the Court.)

MR. ROTHFELD: I have three words, ambiguous in the letter, as your Honor has seen.

BY MR. ROTHFELD:

Q Mr. Lugo, I show you an application for disability form (handing to witness) and ask you whether you filled this out and sent this to the trustees?

A What is this application for?

Q Application for disability pension.

THE COURT: Has he got his signature on there? Ask him if that's his signature.

MR. PREMINGER: Might I see it?

THE COURT: That's the quickest way to do it.

Q Is this your signature, Mr. Lugo?

A Yes, this is my signature but there's some material in there I didn't put in there.

THE COURT: Show it to Mr. Preminger.

(Mr. Rothfeld complies.)

MR. [illegible] Offered in evidence.

THE COURT: Defendant's Exhibits 3, Claim [illegible] in evidence.

(So marked.)

THE COURT: Signed [illegible].

(Document handed to the Court.)

BY MR. ROTHFELD:

Q Mr. Lugo, as part of that application, did you submit to the trustees these two letters by your physician, Dr. Simpson?

A That was the doctor who used to take care of me when I first started having diabetes. Since they had asked me for some papers, for the examination, she sent them there.

MR. PREMINGER: Your Honor, I will stipulate to let the entire disability file in. I don't think it's particularly relevant, but I have no objection.

THE COURT: What are these things?

MR. ROTHFELD: If your Honor please, I believe it's greatly relevant because your Honor is being asked to determine the propriety of this procedure.

THE COURT: I'm not going to determine as

I indicated before, whether or not this man has or has not diabetes. I can assure you of that.

MR. ROTHFELD: I'm referring to the propriety of the procedure by the fund, your Honor.

I believe that's an issue.

THE COURT: It is.

Did you see these before?

MR. ROTHFELD: They were in the motion papers two years ago.

THE CLERK: Plaintiff's Exhibit C, a letter dated December 23, 1971 marked in evidence (sic).

THE COURT: December what?

THE CLERK: December 23, your Honor.

THE COURT: What's the other one?

THE CLERK: Note dated 5/22/72.

THE COURT: Who are they, doctors?

THE CLERK: If I can read it. It's Ms. Simpson.

MR. ROTHFELD: M.D.

THE COURT: Let me see that.

(Document handed to the Court.)

THE COURT: Apparently, she is a Spanish - speaking doctor.

MR. ROTHFELD: Yes, your Honor.

[illegible]

THE COURT: Yes.

[illegible]

THE COURT: It says he's being treated for dizziness; sure.

BY MR. ROTHFELD:

Q Mr. Hugo, in October of 1974, did you fill out this refund --

THE COURT: Just recently, a number of days ago?

MR. ROTHFELD: I'm sorry.

Q October '72 -- withdrawn.

In October of 1972, did you fill out this entire refund application in your own handwriting?

(Handing to the witness.)

A For refund of what?

Q For a refund of monies which employers had contributed to your account with the annuity plan of the Illumination Products Industry after which checks were mailed to Puerto Rico every month?

A Yes, he has the receipts.

THE CLERK: Defendant's Exhibit 3, refund application.

MR. ROTHFELD: I specifically refer your

Honor to the lower left-hand corner.

THE COURT: Did they pay him checks accordingly?

MR. ROTHFELD: Yes.

THE COURT: Is this annuity plan the same as the trust pension plan?

MR. ROTHFELD: It's one of the many benefits in the industry.

THE COURT: You have two then?

You have annuity plan and you have a pension plan?

MR. ROTHFELD: Among others.

THE COURT: This has no relevancy to the pension plan?

MR. ROTHFELD: No. The relevancy is the lower left-hand corner.

THE COURT: That he's gone to Puerto Rico?

MR. ROTHFELD: That's right.

THE COURT: He admits he's been to Puerto Rico.

MR. ROTHFELD: My next question is why he went there.

THE COURT: Ask him.

BY MR. ROTHFELD:

Q Mr. Lugo, how did you come to Puerto Rico?

A I wouldn't have to look also.

THE COURT: Look hit to read the notation at the bottom.

MR. PREMINGER: All right, I was looking at the time.

THE COURT: Let's get this question off.

Q Mr. Lugo, would you please read the two bottom lines (handing to witness)?

THE COURT: You can redirect on that, Mr. Preminger.

A Yes, I put this address down there so they would send the checks to where my sister lived but I was always at home.

THE COURT: You sent the checks to your sister in Puerto Rico?

THE WITNESS: (In English) Yes. She is still receiving them.

THE COURT: In Puerto Rico but you were in Brooklyn?

THE WITNESS: Yes.

THE COURT: How did you get the checks then?

THE WITNESS: She puts them in an account and whenever I need money, she sends it up there.

[illegible]

[illegible] the check?

[illegible]: No.

THE COURT: You were paid in an account.

You never moved to Puerto Rico?

THE WITNESS: She puts them in an account.

THE COURT: Let me ask you this: What's your sister's name?

THE WITNESS: Blanca Sanchez Lopez.

MR. PREMINGER: Excuse me.

THE COURT: No, I will not excuse you.

MR. PREMINGER: Can we approach the bench?

THE COURT: No.

The company sent those letters to you in your name, didn't they?

THE WITNESS: Yes, they are sent to me but when she gets them, she signs them and they take it from her.

THE COURT: You mean even though they are addressed to you in Puerto Rico, they somehow reach the same address of your sister?

THE WITNESS: Yes.

THE COURT: All right.

Now, you can approach the bench.

(Jury not present.)

MR. PREMINGER: The problem is the question: did he have to move to Puerto Rico.

I don't think he'll deny he went to Puerto Rico.

THE COURT: I understand. You're talking about the word "move."

MR. PREMINGER: Right.

THE COURT: I saw this.

MR. PREMINGER: Another thing, this is an annuity plan. He's getting back money he paid in.

MR. ROTHFELD: He didn't pay anything in.

THE COURT: Anyway, it's not the pension trust fund.

MR. PREMINGER: No.

THE COURT: It's not of importance.

MR. PREMINGER: All right.

THE COURT: But I'll follow through.

I'm going to take a recess for lunch.

MR. ROTHFELD: One more question.

(Open court.)

BY MR. ROTHFELD:

Q Mr. Lago, is it true that you went to Puerto Rico in part to look for a job?

I had to take care of my parents who were getting old and sick and since they were sick for such a long period of time, I had to stay there to look for work.

THE COURT: Did you go there by yourself?

THE WITNESS: Yes, by myself.

THE COURT: Are you married?

THE WITNESS: Yes.

THE COURT: Where is your wife?

THE WITNESS: 185 Nevins Street, Apartment 5H. -- I'm sorry, JJ.

THE COURT: You mean --

THE INTERPRETER: That's the answer to the question: "Where is your wife?"

THE COURT: "Where was your wife when you went to Puerto Rico, did you leave her here?

THE WITNESS: At the apartment where we lived.

THE COURT: You live there with your wife now?

THE WITNESS: Yes, of course.

THE COURT: All right. I didn't understand why he would go there by himself but he left his wife home.

MR. ROSENFELD: Yes.

Q Mr. Lugo, haven't you spent most of the last [illegible] in Ponce then?

A Yes.

THE COURT: Your wife works?

THE WITNESS: No.

THE COURT: The other questions that occurred to me are irrelevant to this procedure.

We will have lunch and come back at ten after 2:00.

(Luncheon recess taken: 1:00 o'clock p.m.)

ooo

(3:30 o'clock p.m.)

[illegible] LUGO, having been previously duly sworn by the Clerk of the Court, resumed the stand and testified further as follows:

CROSS-EXAMINATION

BY MR. ROTHFELD: (Cont.)

Q Mr. Lugo, is it true that you went to Puerto Rico to take care of your parents and to look for a job?

THE COURT: No, no, no. That isn't the way to ask that question.

Were you asked this question on deposition and did you make this answer.

MR. ROTHFELD: That's okay.

THE COURT: It's not okay. I assume that's what you have.

MR. ROTHFELD: I do have that.

I thought I might trap the witness a bit but your Honor is correct.

THE COURT: Do it any way you want and then he'll answer and you say "Which is correct?"

That's the way it's done by the great majority of lawyers.

Lugo - cross

Mr. Lugo, on October 3rd, --

THE COURT: Show him this deposition, ask him if he signed it.

MR. ROTHFELD: I was debating on the language situation, Judge.

THE COURT: First ask him whether he signed it.

BY MR. ROTHFELD:

Q Mr. Lugo, did you sign this deposition consisting of 29 pages, for which is a transcript of your examination in myoffice on October 3rd, 1974?

THE COURT: Wait a minute. He's got to translate that.

A I don't remember on that date --

THE COURT: Look at your signature.

Is that your signature?

MR. ROTHFELD: That's not a signed copy.

MR. PENINGER: I think I gave you one and I gave Mr. Rothfeld a copy.

THE COURT: The Reporter can't hear you. Speak up.

MR. PENINGER: Yes, your Honor.

BY MR. ROTHFELD:

Q Did you sign it?

THE COURT: If you're going to ask him questions, you better go back to the bench.

Mr. Rothfeld.

MR. ROTHFELD: Yes, your Honor.

Q Now, On October 3rd, were you asked this question and did you make this answer?

THE COURT: In the deposition, in the examination held in the office on that day.

Question?

Q "Question: How did you occupy your time while living in Ubuado ?

"Answer: He took care of his parents because they are very old."

THE COURT: He uses the word "he"?

MR. ROTHFELD: Might we go off the record?

THE COURT: Yes.

(Discussion off the record.)

THE COURT: I see, you had an interpreter there.

Q "He just said he took care of his parents. They are very old and that's what he was doing while he was there.

"Question: You were living alone with your

[illegible] 22

[illegible] this, sir, in your own [illegible]

[illegible] to take care of

[illegible] and to look for a job."

Were those the questions asked of you and were those answers your answers given on October 3rd?

THE INTERPRETER: Let me read it to him.

MR. SCHECHTER: Surely.

(Said transcript given to the interpreter.)

A Yes.

Q Now, Mr. Lugo, when you were looking for work in the Brooklyn Office of the New York State Employment Service, did you look for work as a power press operator?

A No.

Q Mr. Lugo, I show you two yellow cards, headed: "Applicant Contact Record."

I ask you are these two cards which you handed to me during your deposition on October 3rd, 1974?

THE COURT: This is an application to do what?

MR. ROTHFELD: With respect to power press operator, Judge.

THE COURT: I mean what office?

by the New York State Department of Labor, Division of Employment, New York State Employment Service.

A Yes.

Q Now, I show you the words on this yellow form: "M.O. operator." And on this form : "Power press." And I ask you do you know what these words signify?

A No.

MR. ROTHFELD: I offer in evidence.

Now, Judge, these are not on my list but I didn't anticipate --

THE COURT: Show them to Mr. Preminger. See if he has any prejudicial remarks arising from your failure to put them on your pretrial list.

MR. PREMINGER: No objection, your Honor.

THE CLERK: Defendant's Exhibit F, New York State Department of Labor form marked in evidence.

Defendant's Exhibit G, New York State Department of Labor form marked in evidence.

(So marked.)

THE COURT: What do these notations of various dates mean? Maybe you need not ask him. Maybe you and Mr. Preminger can get together to tell

MR. ROTHFELD: At each visit of Mr. Lugo to the New York State Employment Service, he was told to come back two or three weeks later for another appointment with respect to his search for work.

That's set forth in paragraph --

THE COURT: He applied in '72. When did he stop work?

MR. ROTHFELD: April of '72.

THE COURT: He stopped work in April of '72. I see here June, July, August, September, October. Then he went on, came back again in '73 and last year, October, 1973, there's something here that says Wednesday, September 19th, 1:00 p.m..

That's the last application, so he's been coming back again and again but didn't get a job; is that what you're trying to say?

MR. ROTHFELD: I don't know what work, if any, he's done.

THE COURT: Well, if he had a job, he would not be coming back.

MR. ROTHFELD: Unless they are part-time.

MR. PREMINGER: I don't know that it's relevant, but with respect to that last date of

September 20th, but evidently did not go to that appointment. He already left for Puerto Rico, January 20th.

THE COURT: Those are appointment dates.

MR. PREMINGER: Yes, the final one he did not go to.

BY MR. ROTHFELD:

Q Mr. Lugo, while you were in Puerto Rico, did you make your visits to the Puerto Rico Department of Labor in Arecibo, Puerto Rico?

A Yes.

Q And did you apply for work as a "Pump press operator," in Arecibo, Puerto Rico?

A Well, that's what the young lady put down because she asked me what I knew how to do and that's what I told her as the only thing I knew how to do.

THE COURT: What's the description?

MR. ROTHFELD: Pump press operator.

THE COURT: Very well.

Q Now, Mr. Lugo, did you apply for disability benefits to the United States Department of Health, Education and Welfare?

MR. PREMINGER: Your Honor, I object to this question. I don't see that this has any

relevant to the proceedings.

MR. ROTHFELD: May I be heard?

THE COURT: This is an application before Health, Education and Welfare, for what?

MR. ROTHFELD: disability benefits.

THE COURT: Why isn't that relevant, Mr. Preminger?

MR. PREMINGER: Your Honor, the only thing it could possibly have any relevance to would be whether or not the plaintiff is disabled.

As I understand it, that issue is not going to be decided by the Court, however; besides any decision by Social Security would not be binding on the Court and any finding by Social Security would have no force whatsoever and would be totally hearsay.

MR. ROTHFELD: Might I be heard?

THE COURT: Yes.

MR. ROTHFELD: Your Honor does have before you as plaintiff understands it and as I believe your Honor understands it, whether or not the procedures of the trustees of this defendant fund --

THE COURT: I think that's true.

with respect to lack of hearing.

Now, the plaintiff had a three-stage hearing before Health, Education and Welfare on this same issue.

THE COURT: Well, I don't know.

I think I might have spoken too fast. He had a hearing?

MR. ROTHFELD: Hearing --

THE COURT: I thought you were introducing this testimony to show that other organizations make determinations as to benefits in order to indicate that your pension trust procedure is not different fromthe procedure adopted by the Government, but that's not your purpose.

In fact, this may be a boomerang in the sense that they did have a hearing for HEW, didn't they?

MR. ROTHFELD: I don't believe it's a boomerang, your Honor, because from my point of view, what I'm offering to prove is that the results of the procedure before HEW and the procedure before the trustees were identical and since the results were identical, there is at least an inference that--

THE COURT: Well, you've still on the same

[illegible] I don't think the issue is whether or not this man is disabled.

I tried to make that clear to you, Mr. Freiwinger, but you opened the door and I therefore, permitted this other testimony to come in.

I'll take it for what it's worth but I repeat to you that I'm not going to decide whether this man is able or not able. You understand that, don't you?

MR. ROTHFELD: I regretfully do understand it, your Honor.

THE COURT: All right. Proceed.

CROSS-EXAMINATION

BY MR. ROTHFELD: (Cont.)

Q Mr. Lugo, did you apply for disability benefits to the Department of Health, Education & Welfare?

THE COURT: Show him a copy, or do you have something that you can refresh his recollection with or, "Were you asked this question and did you give this answer," and so on.

MR. ROTHFELD: I thought I could save time but apparently I can't.

THE COURT: Maybe he can refresh his recollection.

MR. ROTHFELD: All right.

BY MR. ROTHFELD:

Q Mr. Lugo, around the 21 of April, 1972, did you apply for disability insurance at the United States Social Security Office?

A I went to 345 Adams Street and I did fill out some papers.

Q Were you examined by two doctors, one male doctor and one woman doctor?

A Yes.

Q In April of 1972?

A I don't remember the date.

MR. PREMINGER: Your Honor, this current information is set forth in the stipulation of facts. This is in paragraph 14. We can save time.

THE COURT: Yes, I recall that. I don't know why I didn't pick it up.

MR.ROTHFELD: That's item 14 on the bottom of page 5.

THE COURT: Yes, I have it. I read it. You can ask him since you've gone this far: Was he denied disability benefits?

DIRECT EXAMINATION:

Q Were you denied disability benefits on the grounds you're saying sugar wasn't high enough to keep you from working?

A Well, they told me that I could control the diabetes.

THE COURT: He didn't answer the question yes or no.

THE INTERPRETER: Yes or no?

THE WITNESS: No, they didn't give me anything.

THE COURT: No, they didn't what?

THE INTERPRETER: "Give me anything."

Q Now, did you, thereafter, Mr. Lugo, have a hearing before an administrative law judge?

A Yes.

Q And did that administrative law judge say that evidence before him showed that you could do restaurant work, agricultural work, cleaning offices work or light labor?

A He didn't tell me anything.

THE COURT: What's next?

MR. ROTHFELD: Judge, that response was contrary to the transcript.

THE COURT: Well, he's got to ask him.

MR. ROTHFELD: All right.

You ask him if that refreshes his recollection. That may save you a lot of time.

Let the Interpreter read it to him and then ask him does that refresh his recollection, what they said you said.

(Interpreter reads questions to the witness.)

THE WITNESS: I don't remember.

THE COURT: Well, he's got to go through with it. Ask him whether he was asked this question and did he give this answer. Just yes or no.

Now, I can do it faster.

MR. ROTHFELD: I think I'll drop it, Judge.

THE COURT: All right.

MR. ROTHFELD: Mr. Preminger, do you have with you a copy of the decision of the administrative law judge concerning which we just heard testimony?

MR. PREMINGER: No, I don't.

THE COURT: You didn't subpoena it?

MR. ROTHFELD: I advised Mr. Preminger a couple of times informally that I would be asking

THE COURT: That's no good.

MR. ROTHFELD: I thought it would do the trick.

THE COURT: There's no way to try a case.

MR. ROTHFELD: Okay.

THE COURT: I don't mean to say that's no good. Don't put it down that way. It will avail of nothing.

BY MR. ROTHFELD:

Q Mr. Lugo, did you receive a decision from the Appeals Council of the Department of Health, Education and Welfare on or about December 7th, 1973 denying your request for a further appeal?

THE COURT: Let him interpret that. Give him that paper in the meantime.

(Document handed to the Interpreter.)

(Last question read back.)

THE INTERPRETER: If he may interject, he doesn't understand the question.

MR. PRENTISS: If it's any help, this was also stipulated to.

THE COURT: It's stipulated, Mr. Rothfeld.

MR. ROTHFELD: I offer in evidence.

[illegible]

[illegible] Mr. Premenger, maybe you can answer it better, although it probably will have to get Mr. Lugo and perhaps maybe you might pose a question to him.

Did he ever ask the pension trustees for a hearing on his application for disability benefits? Did he ask it either before or after they were denied or both?

MR. ROTHFELD: Never did, Judge.

THE COURT: Never asked for a hearing? That doesn't necessarily mean it's relevant. I just wanted to know --

MR. PREMINGER: I assume if the plan had provided a hearing, they would so have advised people applying for pensions.

THE COURT: You mean they should so advise?

MR. PREMINGER: If they had.

THE COURT: They would.

MR. PREMINGER: Yes.

THE COURT: Of course, as a matter of fact, this I don't know whether even though their original provision in the trust plan for such a hearing, whether they would have denied it or not

MR. ROTHFELD: I offer in evidence the action copy of Appeals Council on Request for Review issued by the Department of Health, Education and Welfare.

THE COURT: Do you object?

MR. PREMINGER: No, your Honor.

THE CLERK: Defendant Exhibit M so marked.

(So marked.)

THE CLERK: In evidence.

THE COURT? What else have you got?

MR. ROTHFELD: That's all.

THE COURT: Very well.

Any redirect?

REDIRECT EXAMINATION

BY MR. PREMINGER:

Q Mr. Lugo, since you terminated your employment at Majestic in 1972, have you worked?

A No.

Q How did you support yourself between the time

[illegible] 1

[illegible] evidence that [illegible] left [illegible]

Rico in 1973?

MR. ROTHFELD: Objection to that.

THE COURT: No, I guess I should [illegible] answer.

Was it both?

MR. PREMINGER: Yes, your Honor.

THE COURT: Both husband and wife?

MR. PREMINGER: Yes, your Honor.

MR. ROTHFELD: That's not correct, your Honor. I respectfully contradict counsel.

THE COURT: Why don't you cross-examine when he's finished.

MR. ROTHFELD: All right. I objected to the previous question on the ground it states as the date the witness left for Puerto Rico, December, 1973.

Now, there is no evidence on the record that the time he went to Puerto Rico was December, 1973. There is some ambiguity there since --

THE COURT: There was something at the rear of a letter which said the mail should be sent to Puerto Rico.

MR. ROTHFELD: Next month; and that was

(Recess, 3:17.)

THE COURT: Are you ready for the record?

MR. PREMINGER: I am. I will restate the question and lay the foundation.

THE COURT: Very well.

BY MR. PREMINGER:

Q Mr. Lugo, you stated previously that you had been in Puerto Rico for most of the last year.

When did you leave for Puerto Rico?

A I went on December 16, 1973.

Q I'll propeat my prior question which was how did you support yourself and your family between the time you terminated your employment in April of 1972 and the time you left for Puerto Rico in December, 1973?

A My father receives Social Security and he maintained me. I received $40.00 a month that I was receiving here and I received $40.00 a month that the union was sending me.

Q Was that before you left for Puerto Rico or after youleft for Puerto Rico?

A After.

THE COURT: After --

MR. PREMINGER: That was after he arrived in Puerto Rico.

THE COURT: After December 1973 he got $63.00.

Q How did you support yourself between April--

THE COURT: He said he was supported by the father's social security.

MR. PREMINGER: He misunderstood the dates. He gave the answer of how he was supporting himself in Puerto Rico.

THE COURT: He stopped. I don't blame him. You're talking, he's talking.

Now, what's the answer?

THE WITNESS: I didn't work. I mainteined myself with what my father helped me when I was down there.

MR. PREMINGER: We seem to be having a bit of a problem.

THE COURT: Yes, he has his dates mixed up.

BY MR. PREMINGER:

Q The question is not when he was in Puerto Rico, prior to going to Puerto Rico.

A Before I went to Puerto Rico I was living on welfare.

THE COURT: On welfare.

MR. PREMINGER: Thank you.

Q After you left for Puerto Rico, did your wife and children get veterans benefits?

A Yes.

Q And was the budget they received lower than when you had been in the house?

MR. ROTHFELD: Objection.

THE COURT: Yes; sustained.

MR. PREMINGER: No further questions.

RECROSS-EXAMINATION

xx BY MR. ROTHFELD:

Q Mr. Lugo, is it correct that every month, beginning November 1972 the annuity plan of the Illumination Products Industry sent a check to -- issued to you at the address in Arecibo, Puerto Rico?

THE INTERPRETER: Beginning of November of '72?

MR. ROTHFELD: Yes.

A November of '73?

Q November, '72.

A I don't remember because I was in Puerto Rico.

THE COURT: Well, you see where all this gets us? I don't think it gets us anywhere.

MR. ROTHFELD: It shows a fallible memory,

Judge.

THE COURT: That isn't anything to do with whether this bank plan or pension plan was structurally defective. The fact that the plaintiff has a fallible memory. It's not going to have or help us.

Q Mr. Lugo, I show you 24 monthly checks made payable to your order in Areecibo Gardens, Puerto Rico and in each instance endorsed by somebody and I ask: Do you know whether or not each of these 24 checks, beginning November 1972 was received by somebody in Areecibo, Puerto Rico (handing to witness)?

THE COURT: How many?

MR. ROTHFELD: Twenty-four.

A Well, it was my sister who received that money over there.

Q And that was for each month beginning November, 1972?

A I couldn't tell you when it was that they started arriving there.

Q Mr. Lugo, I show you this check with a date stamp by Franklin National Bank, marked "Paid, November 30, 1972."

I show you the reverse side. I ask you

Lugo -- direct

163

Q Was that your signature?

A No, I don't sign that check.

Q Who signed it?

A That check was signed by my nephew.

Q Your nephew?

A Yes.

Q Mr. Lugo, do you know since what month of what year the checks issued by the New York City Department of Welfare to support your household in Brooklyn, New York, were issued to your wife?

A I don't know.

Q Did you wife at any time advise the New York City Department of Welfare that you had left the household?

MR. PREMINGER: Objection.

THE COURT: What are you trying to prove; that he illegally received welfare checks?

MR. ROTHFELD: Well, your Honor, there is an issue here --

THE COURT: No.

MR. ROTHFELD: -- where Mr. Lugo was and where he worked and I just don't know the fact here.

THE COURT: You are excused.

(Witness excused.)

MR. PREMINGER: Plaintiff rests, your Honor.

THE COURT: Is this all you have?

MR. PREMINGER: That's all our witnesses.

THE COURT: Just one witness?

MR. PREMINGER: Just one.

MR. ROTHFELD: I respectfully move to dismiss on the ground that the plaintiff has failed to make out any kind of a prima facie case with respect to his contention that there is a structural defect in the fund in that it failed to provide a hearing for Mr. Lugo.

The evidence on the record establishes that whether or not Mr. Lugo had or had not had hearings -- if he had asked for any -- would not have made one iota of difference in the result.

THE COURT: He didn't claim he did. I don't know how we ever got off on that. That's my thought, nothing at all to do with the case.

Mr. Lugo, please step up here with the Interpreter.

(Both parties approach the bench.)

THE COURT: Mr. Lugo, how old are you?

THE WITNESS: Fifty-three years.

THE COURT: How old were you in April, 1972? You were 51?

THE WITNESS: Yes.

THE COURT: What's the date of your birth?

THE WITNESS: July 12, 1972.

THE COURT: Thank you.

Any questions?

MR. PREMINGER: No.

THE COURT: You may step down, Mr. Lugo.

(Witness excused.)

THE COURT: Next, I'm denying your motion. I'll reserve decision on you.

MR. ROTHFELD: I call Mr. Roth.

MR. PREMINGER: If there's no further testimony on the part of the plaintiff, can Mr. Lopez be excused?

(Interpreter excused.)

A-321

THE WITNESS: My name is Charles Roth.

C H A R L E S R O T H , called as a witness herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION:

BY MR. ROTHFELD:

Q What is your occupation, Mr. Roth?

A I'm an assistant administrator to the Employees' Retirement Fund, Illumination Products Industry.

Q How long have you been connected with the fund?

THE COURT: You call it "fund".

I thought about it as a pension plan, how shall we refer to it?

MR. ROTHFELD: The main defendant is Employees' Retirement Fund.

THE COURT: That is a misnomer. You should have named the defendants. I guess you did name some defendants, et al.

MR. PREMINGER: Mr. Roth and all the trustees were named.

THE COURT: That's the answer to that.

THE COURT: You're a member of this fund?

THE WITNESS: No, sir.

THE COURT: Let's proceed.

BY MR. ROTHFELD:

Q As assistant administrator for the fund, were you in charge of Mr. Luge's file?

A Yes.

MR. PREMINGER: Excuse me, did Mr. Roth answer the question, how long he had been connected with the fund?

THE COURT: He didn't answer that question.

THE WITNESS: Approximately nine years.

MR. PREMINGER: Thank you.

Q Now, when the trustees in September of 1972 made their decision --

THE COURT: September?

MR. ROTHFELD: I believe so.

THE COURT: Is that right?

MR. PREMINGER: I believe September 27th.

THE COURT: All right, I'm sorry. I'm sorry I interrupted you.

MR. ROTHFELD: That's all right, your Honor.

BY MR. ROTHFELD:

Direct - Mead.

Q [illegible] of Dr. Simpson, both the one to Dr. Luger's application for disability, all of which three are Defendant's exhibits?

A Yes.

Q Did the trustees --

THE COURT: What exhibits are they?

THE CLERK: They are Exhibits C and D for the Defendant, and the disability claim for is B.

THE COURT: What's the doctor's name?

MR. ROTHFELD: Dr. Simpson.

THE COURT: What's the other one. I have only two.

MR. ROTHFELD: Two letters from Dr. Simpson and one application.

THE COURT: Very well.

Q Did the trustees also have before them a letter dated June 22, 1972, copy of which you sent to Mr. Preminger two years ago and also attached thereto, a series of medical charts?

A Yes.

THE COURT: Where is it?

Are they introduced in evidence?

MR. ROTHFELD: I'm about to, Judge.

Defendant's Exhibit I, letter of June 22, 1972 W. T. Krlete.

As Defendant's Exhibit J --

THE COURT: Wait a minute. I haven't seen anything. Let me see Exhibit I.

(Document handed to the Court.)

THE COURT: Has that been agreed to, Mr.Preminger?

MR. PREMINGER: No, your Honor, I have no objection for it coming in to show what was before the committee.

THE COURT: Very well.

THE CLERK: Defendant's Exhibit I, letter dated June 22, 1972, W. T. Krlete, marked in evidence.

(So marked.)

THE COURT: You have another, haven't you?

MR. ROCHFELD: Yes, letter J, your Honor.

THE COURT: This is a medical history of the pension committee signed by Dr. --

MR. ROCHFELD: There are a half-dozen doctors involved.

typical doctor's signatures which I know you can't read it...

MR. ROTHFELD: If you'll bear with me a moment, I have a letter setting forth in more legible form the names of each of the doctors.

THE COURT: Why don't we find out what this means. We haven't marked it yet. It's a medical history, right?

THE CLERK: Defendant Exhibit J, medical history dated 5/24/72, marked in evidence.

(So marked.)

BY MR. ROTHFELD:

Q Mr. Roth, did the trustees in arriving at their decision with respect to Mr. Lugo's eligibility for disability benefits take into consideration all these various exhibits?

A Yes.

Q And based upon these exhibits, did the trustees in fact find that Mr. Lugo was not eligible for disability benefits?

A Yes.

THE COURT: I would think it would be rather relevant for you to bring out what this exhibit J

[illegible] doctors.

MR. ROTHFELD: May I have a few moments, please?

THE COURT: Yes.

(Pause.)

MR. ROTHFELD: If your Honor please, for the guidance of the Court --

THE COURT: And Mr. Preminger, also.

MR. PREMINGER: -- and Mr. Preminger, I have a letter to me dated October 17th, 1974 signed by Dr. Krieto which purports to set forth a summary of the seven-page medical history giving the names of the doctors, the various --

THE COURT: Show it to Mr. Preminger.

(Mr. Rothfeld complies.)

MR. ROTHFELD: And this was in lieu of producing Dr. Krieto and examining him at length in line with our pretrial examinations where your Honor indicated that your Honor was not concerned with the fact or non-fact of the plaintiff's disability.

THE COURT: You've got it in anyway, didn't

MR. ROTHFELD: Not only I don't have the doctor. That letter would include something, some part of the proceedings.

THE COURT: Hold a minute, Mr. Premenger, the only reason I raised this is because I couldn't read the names.

MR. PREMINGER: I don't mind if your Honor is looking at this. I think in light of the fact that the issue of disability is not before the Court, that this line which Mr. Rothfeld is taking has really bogged things down and I don't think it's going to fulfill any useful purpose.

THE COURT: It's not going to bog things down. It will only be a second, as I understand.

MR. PREMINGER: I don't really see how this adds anything.

THE COURT: It gives you the names. At least it is gratifying to be able to read.

MR. PREMINGER: For the purpose of identifying different physicians, I have no objection to it coming in.

MR. ROTHFELD: If your Honor please, I believe

Letter dated Dec 1 1964 etc.

THE COURT: What?

MR. ROTHFELD: There is before your Honor the issue of the procedures of the trustees --

THE COURT: I suppose so.

MR. ROTHFELD: This letter would indicate, although it is hearsay, and not subject to cross-examination, this letter would indicate something of the extensive medical procedures to which the plaintiff was given -- during which the plaintiff was given the opportunity to show what disability he may have.

MR. PREMINGER: I have not seen it prior to today. I haven't seen it. We were not told it was going to be introduced.

THE COURT: It doesn't seem to be different from the medical history.

MR. PREMINGER: It doesn't seem so, but I object to it on the grounds that it's hearsay.

THE COURT: So is the medical history.

MR. PREMINGER: I did not object to the medical history coming in on the grounds that it would show or demonstrate upon what the committee based its decision.

THE COURT: That substantially would show the foundation.

MR. ROTHFELD: It would show that the condition beyond the duration.

THE COURT: And how they reached --

MR. PREMINGER: That I was willing to let it come in to show anything with respect to the condition.

THE COURT: Let me ask you this: No one has established yet as to what disability means.

MR. ROTHFELD: That's stipulated to, Judge.

MR. PREMINGER: It's stated in the plan in order to be considered disabled a person must be disabled to the extent that he can no longer work in either, in the industry or any other job.

THE COURT: You object to that?

MR. PREMINGER: I object to that, your Honor.

THE COURT: Wait a minute. Let me see the stipulation.

No one yet introduced the plan itself.

MR. ROTHFELD: The booklet is in evidence. It's equivalent to the plan.

THE COURT: Is it agreed that that booklet is equivalent to the plan?

[illegible]

MR. PREYTHER: I would agree with that.

THE COURT: That there's nothing related with pending to the plaintiff.

MR. PREYTHER: I don't see there would be.

THE COURT: Mr. Roth's letter, further, Plaintiff's Exhibit 3, states specifically what requirements the plaintiff had to fulfill, which ones he had fulfilled and which ones he hadn't.

THE COURT: Where is that letter? Let me see that.

MR. ROTHFELD: Judge, the definition of disability --

THE COURT: Let me see that, too.

MR. ROTHFELD: Is set forth in the middle of page 10 of Plaintiff's Exhibit 2 which is Defendant's Exhibit A.

THE COURT: Are you saying this tests whether or not the person is permanently incapacitated or is disabled to such extent that he or she can no longer secure gainful employment in the Illumination Products Industry or any other business.

That's the test?

MR. PREYTHER: Yes.

THE COURT: Very well.

Yes, marked now?

THE COURT: This exhibit is being to be marked?

Plaintiff's Exhibit K, letter from Dr. Kolata dated October 17th, 1974, marked in evidence.

(So marked in evidence.)

BY MR. ROTHFELD:

Q Mr. Roth, did Mr. Lugo or his attorneys, prior to the filing of their complaint in this court, ever ask the fund for a hearing with respect to Mr. Lugo's disability?

MR. PREMINGER: Objection.

THE COURT: I'll permit it.

MR. PREMINGER: The plan specifically states the finding of the committee is final and not subject to any review.

THE COURT: Isn't that right?

MR. ROTHFELD: It does.

THE COURT: What's the provision, let me see it. We doesn't have to ask. It will be a futile gesture.

MR. ROTHFELD: I don't know that, Judge.

THE COURT: This particular industry has close to a dozen of these plans.

[illegible] was established on this date,

[illegible] ; in January is that?

R.ROTHENBERG: About 35,000 members. The Electrical Products Industry is one small part of it.

THE COURT: What's the name of the union?

MR.ROTHENBERG: Local 3, Electrical Workers.

MR. PREMINGER: Paragraph 5,"The determination in good faith in the committee of any matter under this agreement shall be final and conclusive."

Paragraph 20A, the second sentence states --

THE COURT: Wait. Let's see if I can find it here. Would it be paragraph 20 here?

MR. PREMINGER: It probably would be.

THE COURT: I have 18.

MR. PREMINGER: "The committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the committee ..."

THE COURT: And what's the other paragraph you had?

MR. PREMINGER: That was paragraph 5.

MR.ROTHENBERG: We were at the question of [illegible] which was objected to; namely, whether

A-333

Mr. Roth, prior to the institution of this complaint by this Board had there been any hearing.

Your Honor, I did not rule on that objection.

THE COURT: Since this is not a jury trial, I'll let him ask it but I don't think it's relevant at all. He can answer it.

Mr. Roth, suppose you answer it.

THE WITNESS: No, Mr. Lugo nor his attorney--

THE COURT: The answer is now, no request for a hearing.

Have you granted any request for a hearing at any time?

THE WITNESS: Well, we have not granted requests for hearings, your Honor, but we have reviewed adverse decisions by the committee at later dates when additional evidence was furnished by the applicant.

THE COURT: Proceed.

Incidentally, there's nothing in the trust agreement which sets forth the necessity of the committee considering all these other doctors' examinations, are there?

In other words, they could have denied it

[illegible] document, Nothfeld, exhibit [illegible]

MR. NOTHFELD: If they had, Judge, then the action would have been arbitrary, capricious and unreasonable and would have been reversed in State Court without too much difficulty.

THE COURT: I'm asking you a question:

Is there anything in there which says the committee before rendering a decision in this matter must have the applicant examined by four, five, six doctors and then the committee must consider the recommendations of these doctors?

MR. NOTHFELD: No, Judge, but there is the word "good faith" in the plan and I would submit that if the doctors did not make a thorough examination and if --

THE COURT: Where is that "good faith," sir? Is that paragraph 20 or paragraph 5?

THE WITNESS 5.

THE COURT: Five, he says.

MR. NOTHFELD: Determination in good faith.

Furthermore, your Honor, the application for disability which the plaintiff and other applicants file has on it the statement that the

applicants be by way of such a letter that the doctor describing the disability in the fullest detail possible.

Now, in the event that such statements by doctors were sent in in the fullest detail possible, and were not duly considered, then I would have reason to believe that a Court might find that the trustees had not acted in good faith.

THE COURT: I don't know if that's before me.

MR. ROTHFELD: Well, your Honor, the plaintiff has not alleged a lack of good faith by the trustees.

THE COURT: No, but I don't know that that issue will ever be before me in Federal Court. It could be in this sense of the word that -- no, I don't suppose so. If the agreement had stated that the trustees can, as you said, use their discretion to deny or grant applications regardless of the doctors' examinations, then of course, that's structurally defective, I would think because it would arbitrarily permit the trustees to do what they want in excluding a number of employees from the benefits of the plan.

[illegible] would be [illegible] in accordance with your prior decision on the motion to dismiss for lack of jurisdiction.

I, of course, have preserved my contention, as shown in the pretrial order that this Court does not have that jurisdiction but that the State Court does, only.

THE COURT: Anyway it's not involved.

MR. ROTHFELD: Yes.

MR. PREMINGER: I would like to raise one issue and that is Mr. Rothfeld says this includes a statement with respect to the instructions that the applicant obtain a letter from a doctor describing the disability in the fullest detail possible.

It is written on the back of the form. The form is only written in English. There is no evidence that the plaintiff was aware --

THE COURT: Mr. Preminger, now you're taking advantage of me.

MR. PREMINGER: The front of the form, nonetheless, tells the applicant should look at the reverse side.

[illegible]

THE COURT: Mr. Rothfeld has an application concerning the [illegible] ruling but I suppose was for disability benefits --

MR. ROTHFELD: That's correct, your Honor.

THE COURT: And a poor person couldn't speak, only Spanish, although she had her son with her, if I'm not mistaken and the notice she got was that she could have an attorney, but the probability is that she would have to pay an attorney's fee.

I think in the opinion I said if you are dealing with a Spanish person, that should be in Spanish if you are talking about a waiver of rights.

You see, looking up from that, he says, "You don't have it in Spanish, ergo, it's a very invalid application."

MR. ROTHFELD: I suppose if we discriminated against Spanish-speaking persons, then the problem--

THE COURT: You mean in favor of or against --

MR. ROTHFELD: Against Spanish-speaking persons by not having the application forms in Spanish, the plaintiff's remedy would be before the

Equal Employment Opportunity Commission, if they have jurisdiction of [illegible] funds, but our contention being --

THE COURT: You don't have that question and also there's no showing this man didn't understand English.

MR. ROTHFELD: That's why I did not stipulate that an interpreter is required in this case.

THE COURT: Let's go ahead.

Let's see that statement on the back of the exhibit.

(Document handed to the Court.)

MR. ROTHFELD: They do not state that the plaintiff is disabled. Those are the letters by his doctor.

THE COURT: Next question.

BY MR. ROTHFELD:

Q Mr. Rosh, in the opinion of the trustees, would holding of hearings in cases involving these applications for disability pensions materially benefit applicants for disability pension and assist them in the preservation of rights?

THE COURT: Sustained. Next question.

BY MR. ROTHFELD:

Q Mr. Roth, in your own opinion as an actuary and administrator of this kind, for some years --

THE COURT: That hasn't been brought out, for some years. Have you been an assistant administrator of this fund for many years, Mr. Roth?

THE WITNESS: I had indicated, your Honor, approximately nine years.

THE COURT: You made that statement?

THE WITNESS: Yes.

THE COURT: I didn't get it. I'm sorry. Nine years.

Q As an assistant administrator of this fund for nine years, is it your opinion that a requirement for hearings involving applications for disability pension would or would not materially assist applicants to obtain their rights to disability pensions in this fund?

MR. PREMINGER: Objection.

THE COURT: Mr. Preminger --

MR. PREMINGER: Your Honor --

THE COURT: Wait a minute. Might I say this first: Perhaps that is objectionable because that's his opinion. You may say he hasn't yet been qualified to express an opinion. I think I

[illegible]

MR. ROTHFELD: If Mr. Roth is going to be qualified, I would like Mr. Roth to lay a foundation as to the qualifications.

THE COURT: You have to, definitely. You have to lay a foundation. What's his qualifications? What did he do before he was assistant administrator of this fund?

MR. ROTHFELD: If your Honor please, I respectfully submit if he shined shoes before the nine years that doesn't matter. He's had nine years of experience.

THE COURT: I quite differ with you. He's had experience on this one fund. How many funds? Ask him, lay a foundation, Mr. Rothfeld.

You're supposed to do that, see what the foundation is. Ask him what his experience is. You can't sit there and say he's experienced, taking his opinion for it. We just don't do that because you wouldn't get very far.

BY MR. ROTHFELD:

Q Mr. Roth, in addition to administering the Illumination Products Industry Fund, did you also administer the Lamp Shade Industry Fund before it

I would like to ask you

A Yes, that is the one fund that I [illegible], the [illegible] Electrical Industries.

THE COURT: Let me ask you a question. Maybe I can get it a little further than Mr. Tosh did.

You began being the assistant administrator, I suppose, of this fund of the Illumination Industry nine years ago?

THE WITNESS: Right.

THE COURT: Was it the same fund that you have been an assistant administrator to for the last nine years or was it any different than when you began?

THE WITNESS: I have my job and title encompasses the administration of a number of funds in addition to this one.

THE COURT: Because of the electrical -- because of the fact that these funds are pursuant to certain collective bargaining agreements made by certain chapters of the Electrical Workers Union?

THE WITNESS: Yes.

THE COURT: And why don't you give me some of the funds? They don't necessarily have anything to do with this particular fund?

THE WITNESS: No.

THE COURT: Are they all different funds?

THE WITNESS: All separate entities covering different facets of the business.

THE COURT: How many?

THE WITNESS: There are two other pension and welfare plans, the Employees' Retirement Fund of the Electrical Manufacturing Industry and the Employees' Security Fund of the Electrical Wholesalers' Industry.

THE COURT: Have you any other funds?

THE WITNESS: We administer, in addition to these pension and welfare funds, we administer three annuity funds.

THE COURT: You had one here.

THE WITNESS: One was mentioned.

THE COURT: They are not in the same category, though?

THE WITNESS: They provide --

THE COURT: I mean --

THE WITNESS: --their retirement benefits.

THE COURT: Does the employee contribute to those annuity funds?

THE WITNESS: These are all non-contributory.

[illegible]

THE COURT: [illegible] So the point is not relevant because you don't have to question it to be further or not -- well, you could have the trustees [illegible] for the sole benefit of the employees, but --

THE WITNESS: You'll find that true in all cases, the plans are constituted for the benefit of the employees.

THE COURT: Well, yes, that's right.

The question is whether it's for the sole and exclusive benefit of the employees, isn't it?

MR. ROTHFELD: That's correct, Judge, of the employees. The word "all" is not in the statute.

THE COURT: Did I say all? What do you mean?

MR. ROTHFELD: The word "all" in your opinion, Judge, but not in the statute.

THE COURT: In what capacity did I use the word "all"?

MR. ROTHFELD: The act provides these funds must be administered for the sole and exclusive benefit of the employees, but not of all the employees.

THE COURT: Exclusive benefit of the employees --

MR. ROTHFELD: Means --

THE COURT: The employee is not --

MR. ROTHFELD: But --

THE COURT: I don't remember using the word all.

MR. ROTHFELD: I believe it's in your opinion.

THE COURT: That I think was simply a Freudian slip.

MR. ROTHFELD: The discontinuation is vital to this case, Judge, with respect to jurisdiction.

THE COURT: I don't think I said that in any other case or any other context so I believe that was simply a slip. I didn't mean anything more than I did when I referred to 3065 which says the trust fund is established "for the sole and exclusive benefit of the employees of such employer."

I don't think it's the crux of this case at all. If it's for the further exclusive benefit of the employees, I suppose it ought to be all employees, although not in the same--

MR. ROTHFELD: The difference --

THE COURT: In the same posture. I mean it would be all employees who satisfied eligibility

would object but it could be for the benefit of all employees if they can satisfy the requirements of the trust.

MR. ROTHFELD: If the plan by some mischance or even by deliberation favored some employees at the expense of other employees so long as those favored were not favored because of some connections with the union or employer or some other reason.

THE COURT: I thought of that. It may be a good argument.

MR. PREMINGER: The section means in determining whether or not the plan is being operated for the sole and exclusive benefit of the employees. Look to them as a group. This is not to say certain employees do not get benefits while certain employees will, but you must look at the employees--

THE COURT: There's nothing wrong with the use of the word "all". That doesn't mean the plan has actually to immediately benefit all the employees because some of the younger employees may never be able to satisfy the eligibility requirements. They may never get any benefits.

MR. ROTHFELD: Exactly.

THE COURT: That isn't what we are talking

potentiality must be there to offset all the credits and [illegible] benefit, [illegible]benefit.

MR. ROMANO: I disagree on that, also.

THE COURT: You're wasting your time.

MR. ROTHFELD: I know that.

THE COURT: He knows he's wasting the time but he likes to waste it.

MR. ROTHFELD: I'm sorry, your Honor.

THE COURT: We were talking about, really, this so-called annuity fund. They may be perhaps in the same category as your retirement fund except that the employee doesn't contribute.

THE WITNESS: The employee doesn't contribute to the retirement fund. Those are all non-contributory. The employee makes all contributions.

THE COURT: What's the difference?

THE WITNESS: It's retirement benefit provided through the annuity. There is a major difference in that the annuity plan is 100 percent invested, every dollar considered for a specific applicant--

THE COURT: He receives it, even if he quits in a year, two years, if he's got anything?

THE WITNESS: That was brought out in this

case. Mr. Lane, I see he is entitled for and is receiving a refund of the monies contributed ...

THE COURT: By the employer?

THE WITNESS: Yes.

THE COURT: He contributes nothing under any circumstances?

THE WITNESS: Yes, sir.

THE COURT: And of course that's uniformly applied to all employees, the annuity plan?

THE WITNESS: Yes.

THE COURT: Where were we, Mr. Rothfeld?

MR. ROTHFELD: Mr. Preminger objected without further qualification of the witness.

THE COURT: Are you finished now with these three annuity funds?

MR. ROTHFELD: Yes, Judge.

THE COURT: Of course, the annuity funds don't have any disability.

THE WITNESS: No.

THE COURT: It's not pertinent. Now, before you became administrator of the various funds of this union, what did you do?

THE WITNESS: I was employed in the electrical

manufacturing industry and I also served as an employee or union trustee of the Employees' Retirement Fund of the Electrical Manufacturing Industry.

THE COURT: What were you, administrative?

THE WITNESS: No, I was a union trustee from 1956 to 1965 at which time I was appointed assistant; my present job.

THE COURT: That's the present one we are talking about, prior to my present job --

THE WITNESS: I was in the industry, electrical manufacturing industry and I served as a trustee of one of the plans mentioned, the Employees' Retirement Fund of the Electrical Manufacturing --

THE COURT: Similar to this present one?

THE WITNESS: Yes.

THE COURT: But it's all been in the electrical industry?

THE WITNESS: Yes.

THE COURT: Not in any other industry?

THE WITNESS: Right.

THE COURT: How long have you been working in one capacity or another as a trustee or

[illegible] of the Pennsylvania Supreme Court Rules in the alternative [illegible]?

MR. WETHERILL: Overall, as the counsel and [illegible], Rule 1631 [illegible].

THE COURT: You mean about 20 years?

MR. ROTHFELD: Eighteen.

THE WITNESS: Eighteen years.

THE COURT: Yes.

What do you want to ask him?

BY MR. ROTHFELD:

Q Mr. Roth --

MR. PREMINGER: Do you want to ask further questions?

THE COURT: I would.

VOIR DIRE EXAMINATION

BY MR. PREMINGER:

Q Mr. Roth, in your experience with retirement funds such as this --

THE COURT: Should I come down and strain my ears? We have to go through that again.

Why don't you try to do something about that?

MR. PREMINGER: I have a cold. I'm having difficulty.

[illegible] Yes.

Q [illegible] Now, in your capacity as a trustee of the Employees' Retirement Fund and not as the assistant administrator, what sort of content or what sort of duties do you have with respect to policy making?

A Well, as a trustee, of course, I was a part of the policy-making team and as assistant administrator, I, of course, do not make policy.

The trustees make policy in all cases. I just follow their dictates.

THE COURT: How long were you a trustee?

THE WITNESS: From 1956 until 1965.

Q What sort of policy do the trustees make?

A The policy that we administer has been pretty much of the uniform nature with respect to the pension plans; the trustees of all the electrical industry's plans have pretty much the same policy with respect to applicants, procedures involved.

Q Do you deal with eligibility requirements?

A Yes.

Q And the manner in which applications are decided?

A Not -- well, yes, to a point, to a point.

Q Raising of pensions, increasing the amounts?

A That's a decision of the trustees.

Q It is a decision of the trustees?

A Yes.

MR. PREMINGER: Nothing further.

THE COURT: Let me ask you this before I forget it: What specific provisions of this trust agreement are objected to in numbers? I mentioned it in my opinion before, but what paragraphs, Mr. Preminger, of this agreement?

MR. PREMINGER: Your Honor, with respect to the disability pension, I imagine it was paragraphs 5 and 20A.

MR. ROTHFELD: 5 is on page 3.

THE COURT: It doesn't have anything to do with age or within ten years, does it? That problem is entirely separate.

MR. PREMINGER: I was talking, there was no requirement for a hearing with respect to application.

THE COURT: I understand.

Now, it has no relevancy to the requirements. In other words, you can be disabled long before your 66 years of age or even though you haven't

[illegible] 10 months within the last [illegible] years, right?

MR. ROTH: Yes.

MR. PREMINGER: With respect to the special requirements, paragraph 18 of the plan describes all the various benefits which the plan affords.

Paragraph 1 under paragraph 18 is the standard pension benefit or retirement benefit.

THE COURT: That has nothing to do with disability.

MR. PREMINGER: This is with respect to retirement.

THE COURT: This is only retirement. Retirement you're talking about -- I'm getting the numbers of your agreement. In retirement, you object to 18 (1)A. What's the other one?

MR. PREMINGER: And predecessor requirement, as stated by Mr. Roth, Plaintiff's Exhibit C.

THE COURT: What was that?

MR. PREMINGER: Mr. Roth's letter setting forth the requirement which Mr. Lago must fulfill.

THE COURT: How can that be any different?

MR. PREMINGER: The collective bargaining agreements that are in evidence before the Court,

[illegible] gentleman retired in 1973.

MR. PREMINGER: This gentleman ceased working in 1972 but became a participant in 1954 or '55 and, therefore, was subject to the eligibility requirements then in effect.

Mr. Rothfeld sets those forth in his papers.

THE COURT: You have that in what?

MR. PREMINGER: Exhibit C -- I'm sorry, it's Plaintiff's 3.

THE COURT: This does apply. It says on the original papers he's required to have been employed or available for employment, by contributing employers, for at least ten years and aggregate 90 months employment in the ten years immediately preceding.

MR. PREMINGER: I did not feel the plaintiff could in good faith challenge that with respect to disability pension since with respect to disability pension, he had worked 90 months within the ten years immediately preceding his application.

THE COURT: He had complied with the 1956 --

MR. PREMINGER: With respect to disability, yes, your Honor, he had fulfilled all eligibility requirements for disability pension except the Joint Retirement Committee found he was not disabled --

THE COURT: Except what you say, necessity for so-called due process. Other than that, he has fulfilled these requirements although under the present plan, there isn't such a requirement, is there?

MR. PREMINGER: That's correct, your Honor.

THE COURT: In other words, they loosened up.

MR. PREMINGER: It would seem that way.

THE COURT: Isn't that right?

THE WITNESS: The requirements have been made more stringent as years go by. The eligibility requirements have been increased. You'll see

[illegible]

[illegible] employment [illegible] on which the eligibility [illegible] already [illegible] in [illegible].

THE COURT: Not under that [illegible], 1970?

THE WITNESS: Yes.

MR. ROTHFELD: With respect to disability pension, the time requirements for eligibility are irrelevant to this case since the plaintiff has complied --

THE COURT: I know that.

What I'm saying is this: That going back to our present plan, paragraph 18 --

MR. ROTHFELD: 20A with respect to disability.

THE COURT: 18 says there shall be ten types of benefits which shall be known as, one, the standard pension benefit and then they say, two, the disability pension benefit.

Now, under one, the standard pension benefit, they talk about 65 years of age and the necessity, I believe, somewhere along the line, of being employed 90 months within the last ten years; isn't that?

THE WITNESS: You'll notice that the eligibility requirements has increased as you read on; you'll see for new participants after a given date, the eligibility requirements are increased periodically.

THE COURT: Yes, but I'm talking about as far as Mr. Lugo is concerned.

THE WITNESS: No, the eligibility requirements have not changed in his respect.

MR. ROTHFELD: Might I have a moment, your Honor?

(Pause.)

MR. ROTHFELD: Judge, with respect to Mr. Lugo, the eligibility requirement for a standard pension are not set forth in the booklet. They are set forth in Mr. Roth's letter, Plaintiff's Exhibit C.

THE COURT: I wonder would you please let me ask some questions. I'm awfully slow and dumb. I know that. I have something in the back of my mind.

MR. ROTHFELD: I'm sorry, Judge.

THE COURT: I want to understand this. I'm reading 18. It talks about the standard pension

[illegible] 217

[illegible] about the [illegible]

[illegible], there's a great deal of talk about [illegible] ten years. I don't find that in the [illegible] pension benefit eligibility requirements under 18.

Maybe I've missed it. Is it in here?

THE WITNESS: Yes, it is.

THE COURT: Would you pick it out for me (handing booklet to the witness)?

THE WITNESS: I'm sorry, your Honor. You are right. It isn't spelled out here. This booklet refers to the benefits being available to those who meet the eligibility requirements.

I'm sorry, it's not in there.

THE COURT: It doesn't spell it out?

THE WITNESS: It doesn't spell out the requirement but it does spell it out as amended in later years.

THE COURT: How did you get it?

MR. BRUNNER: Mr. Roth's letter to me, when I originally met Mr. Lugo, I sent Mr. Roth a letter asking what the eligibility requirements were with respect to Mr. Lugo and which ones he

[illegible]

THE COURT: That was already -- wait a minute. You have a copy of the trust agreement containing amendments of the plan, amendments to the plan. It says as to the eligibility for the standard benefit, Mr. Sanchez Lugo would have to remain employed or available for employment by contributing employers, 90 months within ten years, and so on.

Then, that ought to have been in the other plan.

THE WITNESS: Well, this would have been spelled out in earlier copies --

THE COURT: Don't you think we ought to have the earlier copies, Mr. Roth? It could be that maybe there might have been an error. I don't know.

THE WITNESS: Well, your Honor, that wasn't the real problem here. We agreed that Mr. Lugo had met the qualifications with respect to participation.

THE COURT: Yes, but he also takes -- I'm asking you now is whether at that time or even now as to the standard pension retirement plan,

[illegible] eligibility requirements [illegible] for, one, he should be 55 or 60 and have [illegible] of 20 with the employment within the 5 [illegible] years immediately preceding the filing of his application.

That was true, apparently, in 1956 but I don't find it in this plan in 1970 and I'm wondering whether the plan was changed while he was still employed and therefore, not applicable to him after the change.

Maybe he's entitled to retirement anyway because I don't see it in the 1970 plan.

Have you thought about it?

MR. PREMINGER: As I understand it, the 1970 plan says the participant must meet the service requirement in effect when he became a participant. According to Mr. Roth, that's what was in effect when he became a participant.

THE COURT: What I'm saying is that while I don't doubt Mr. Roth's expertise and his statements, I thought it might be helpful if he did show it, the plan itself, since I didn't find it in that that 1970 plan.

And you think it's still available in

the '70 plan?

THE WITNESS: Not spelled out.

THE COURT: But it's required, in it?

THE WITNESS: Yes, the requirement remains the same. The amendments to the plan pertain only to the new participants coming into the plan.

THE COURT: If someone comes in now under the '70 plan, must he have ten years --

THE WITNESS: No, sir, the eligibility requirements have been increased. Anybody coming into the plan now as a new participant would be required to be employed in the industry twenty years.

THE COURT: That doesn't appear there in the 1970 pamphlet book.

THE WITNESS: It reads:"For the period beginning July 1st, 1967, applicant to be eligible for pension benefits shall be required to have been employed in the Illumination Products Industry for a minimum of twenty years with a minimum aggregate employment by a contributing employer during such period, of 200 months."

THE COURT: Instead of 90?

THE WITNESS: Yes.

[illegible] Mr. [illegible] Mr. Premenger.

[illegible] employment of 200?

THE COURT: Not within ten years, not the ten-year provision.

THE WITNESS: That's within the twenty years, acceptable employment of 200 months within the twenty years.

THE COURT: Immediately preceding?

THE WITNESS: Yes.

THE COURT: You mean he must have worked twenty years in the industry?

THE WITNESS: Yes.

MR. PREMINGER: That's all an employee would have to have been employed. In Mr. Lugo's case, regardless of prior service, those last 90 months in the ten years between '50 and '60 would have to have been worked, even if thirty years before that --

THE COURT: Mr. Lugo wouldn't even comply under this new regulation which requires 200 months within twenty years. He couldn't comply with that because he didn't work for twenty years. I say

[illegible] Mr. Lugo, I believe, worked 105 months --

THE COURT: But not within twenty years.

MR. ROTHFELD: And not 200, which is the current requirement.

THE COURT: Didn't I say that? Maybe I'm not making myself understood.

MR. ROTHFELD: Your conclusion is correct.

THE COURT: We're on different beams.

MR. ROTHFELD: Your conclusion is correct.

THE COURT: What I'm trying to find out, again, is are we certain that the plan, the trust, the pension plan which Mr. Preminger attacks on behalf of Mr. Lugo, requires an eligibility provision of, one, ten years -- I'm sorry, of 90 months employment within ten years immediately preceding the filing of the application?

Are we certain of that?

THE WITNESS: Yes.

THE COURT: Are you satisfied with that, Mr. Preminger?

MR. PREMINGER: Yes, I am, your Honor.

THE COURT: I'm a little misled about that,

is not.

THE WITNESS: Yes, I'm sorry. I thought it was spelled out in this booklet.

THE COURT: It isn't spelled out in the booklet (indicating). All the eligibility requirements for the participants after --

THE WITNESS: Yes.

THE COURT: After 1970.

THE WITNESS: No, no, the increases start in 1959, July 1, 1959 they were increased to 11 years and then each year thereafter, they went up until they reached fifteen years and then final change was to twenty years.

THE COURT: The sooner they get in the better; is that right? Because it may be changed to 25 years --

THE WITNESS: Well, I think the pension reform will --

THE COURT: Take care of that.

When are you going to get regulations on it? What does the Act say? Would you look at that?

THE WITNESS: January 1st, 1976, I believe, provides that multi-employer plans must conform.

THE COURT: Has it been signed?

[illegible] - Judge, the [illegible] by the [illegible], a month ago.

THE COURT: What does it contain?

MR. ROTHFELD: There are vesting provisions with three choices of vesting, generally requiring vesting after, at most, fifteen years.

THE COURT: How about sooner? How soon can you get it vested?

MR. ROTHFELD: There is in one of the three options provisions for vesting after ten years.

One of the three options provides for partial vesting after five years. These are options to be exercised by the plan, not the participant. The plan has the choice.

THE COURT: He can say vest in five, ten or fifteen?

MR. ROTHFELD: The plan, not the participant can say partial vesting in fifteen or complete vesting in ten and --

THE COURT: Suppose it doesn't say partial vesting in five? Don't put this down.

(Off the record discussion.)

A-365

[illegible]

THE COURT: Do you want to go further?

MR. [illegible]: I had [illegible] question.

MR. [illegible]: Can I ask one question?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. FREMINGER:

Q In your present capacity as assistant administrator of the Plan, do you at any time discuss policy with the trustees?

A The trustees formulate the policies. I just carry it out.

Q I understand that.

A Maybe a part of the conversation, but I don't dictate policy.

Q I understand. Are you generally made aware of the reasons for policy decisions?

A Yes. I am usually in attendance at the meeting.

THE COURT: You're in attendance at the meeting?

THE WITNESS: Yes.

Q Are you consulted as to your opinion with respect to policy decisions?

A Not necessarily.

Q [illegible]

A [illegible]

Q You wouldn't be bound by it?

A Of course not.

DIRECT EXAMINATION

BY MR. ROTHFELD: (Cont'd.)

Q Mr. Roth, in your opinion, would applicants for disability pension plan in this industry be materially assisted with respect to their rights if the plan provided hearings with respect to the issues of whether or not the applicant for disability benefits was or was not disabled within the meaning of the trust agreement?

MR. PREMINGER: Objection.

THE COURT: I will permit it.

MR. PREMINGER: This is a different question. He's now asking if in his opinion the rights of participants would be materially affected, not whether in the opinion of the trustees a disability hearing would aid them, which I believe was the prior question.

THE COURT: Yes, I think that's true. Whether the rights would be affected is something that I'm going to decide.

MR. PREMINGER: Exactly.

THE COURT: You better rephrase that question, then.

MR. ROSENFELD: You're sustaining the objection?

THE COURT: Yes, I'm sustaining the objection as to the way you phrased the question. I'm suggesting you go back to the original question.

MR. ROSENFELD: Frankly, Judge, I don't recall.

THE COURT: He just told you what it was. Tell him what the original question was.

MR. PREMINGER: The question was whether or not in the opinion of the trustees, a hearing with respect --

THE COURT: The disability --

MR. PREMINGER: Of an applicant would aid in determining whether or not to grant an application for disability pension.

THE COURT: Would aid the trustees in determining whether or not to grant or deny the application.

BY MR. ROSENFELD:

Q Mr. Roth, in your opinion --

[illegible] 13.

[illegible] I'm afraid the question, I don't have to repeat it. I'll assume that question to be posed to you by Mr. Rothwell. What is your opinion?

THE WITNESS: In my opinion, I don't believe that a hearing would be helpful to the applicant inasmuch as the trustees decision is based --

MR. PREMINGER: Objection, not responsive.

THE COURT: Yes, it is, go ahead.

MR. PREMINGER: He's stating it wouldn't of any aid to the applicant. The question is whether or not --

THE COURT: That's the same thing.

THE WITNESS: I'm sorry.

THE COURT: Go ahead.

THE WITNESS: I don't think it would be of any aid inasmuch as the trustees decision is based primarily on medical opinion is set forth in the trustees' doctor's letter and any reports attached to that letter detailing the extent of the disability. I don't believe that any useful purpose could be served by the physical presence of these medical men or others who might testify for or against the degree of disability.

A-369

out opinions contrary by the doctors and that if or suppose it was brought out by cross-examination that one doctor disagreed with another. Would you think that would aid the trustees in either granting or denying the application?

THE WITNESS: That's possible, your Honor, but I would think in the case of the examination -- for example, the case here, Mr. Lugo, there was not only the opinion of one doctor, but the opinion of a number of doctors and for that reason I think the decision reached by the trustees was sound in that they had not only one doctor examining Mr. Lugo but he had either the results of additional examinations or consultation with other physicians by which the determination was reached that he was not disabled. I think that satisfied the trustees and of course if you want to examine --

THE COURT: These doctors, are these doctors regularly employed by the trustees or are they independent doctors --

MR. MEANEY: These are doctors. --

THE COURT: Such the applicant has refused to meet also to him.

THE WITNESS: These are doctors employed by the pension hospitalization and benefit plan of the electrical industry whose facilities we use. The doctors in the employ of that group would be either employed on a full time basis or on a consulting basis and would be used as each case requires.

The number of doctors who would be involved would depend upon the circumstances in each particular case.

THE COURT: Do you ever use independent doctors? That is, just go out in the field and get an expert --

THE WITNESS: We have used indendent doctors where it was -- where we were unable to have the applicant reach our medical facility. If the person was disabled to the point where they could not be moved, then we would obtain through the medical society, the local society and whatever area he lived, the service of the physician to examine and establish the extent of disability.

Mitchell-direct

THE COURT: By the way, where are this -- Where-

abouts are these -- how many facilities?

THE WITNESS: The medical department at 30-30

Review Avenue, Flushing, New York.

THE COURT: What's a medical department of the

electrical industry?

THE WITNESS: Yes.

THE COURT: Do they have a hospital there?

THE WITNESS: No, it's not a hospital facility.

It's primarily for the purpose of of rendering diagnostic, medical examinations. There's no treatment offered at this facility.

THE COURT: Do they do nothing but pass upon disability of applicants under the trust fund?

THE WITNESS: They do provide for periodic physical examinations of participants on an annual basis.

THE COURT: For the union?

THE WITNESS: Yes.

THE COURT: They're working all the time?

THE WITNESS: Yes.

THE COURT: How many doctors are there, roughly speaking?

THE WITNESS: I don't know the present

[illegible] and I would say approximately by a count, I don't know.

THE COURT: Can they practice independently besides --

THE WITNESS: I'm sure they all have independent practices.

THE COURT: All have independent practices, on a retainer basis, is that what you're saying?

THE WITNESS: I believe that is so, they all have independent practices.

THE COURT: And have independent practices and you pay them so much a year to respond to your calls, something like insurance doctors, insurance company doctors?

THE WITNESS: Well, I wouldn't say in that sense because they actually are employed at this facility for a specified number of hours --

THE COURT: They have to come in every day for specified hours?

THE WITNESS: Yes, they do.

THE COURT: Then they leave and take care of their other work?

THE WITNESS: Yes.

THE COURT: Any further questions?

MR. ROTH: Nothing further.

THE COURT: Do I understand --

We will take a recess.

(Recess)

MR. PREMINGER: Your Honor, I was under misapprehension, with respect to Plaintiff's 5, your Honor, your Clerk informs me that was only marked for identification and not accepted as an exhibit, the actuarial valuation. Let me see it for a minute, please.

(Handed to Mr. Preminger by the Clerk)

THE CLERK: Are you going to offer it?

MR. PREMINGER: I may.

CROSS-EXAMINATION

BY MR. PREMINGER:

Q Mr. Roth, could you tell me, the address of the retirement fund is the same as that of the offices of the physicians you previously referred to, is it not?

A Yes, located in the same building.

THE COURT: This Exhibit 5 that you referred to was this valuation prepared by Martin Segal?

MR. PREMINGER: Yes.

THE COURT: Of this very trust fund in which Mr. Roth has participation, is that right?

THE COURT: As of 1970 Plan?

MR. [illegible]: Amended 1968?

THE COURT: Or came in 1956?

MR. PREMINGER: That's correct.

THE COURT: But the plan which is now in effect is not the same plan, is it?

MR. PREMINGER: Some of the eligibility requirements have changed, your Honor.

THE COURT: Which, the actuarial valuation and review was Martin Segal referring to? That's another problem.

MR. PREMINGER: This valuation is the one for the period ending April 30th, 1970.

THE COURT: I know. That's for a period of what plan reviewing? I know what the period is but is it a period -- there have been amendments to that plan from time to time. You see, now you can see how confusing that can be.

MR. PREMINGER: It is the most recent valuation and it states the financial condition of the plan in 1970 --

THE COURT: You see, in 1970, what was the 20 year requirement?

MR. PREMINGER: Yes.

THE COURT: I'm not sure it might have made quite a difference in the valuation, actuarial valuation with respect to 20 -- this time Mr. Lugo came in, they just had a 90 month and ten year requirement which also might make a difference. That plus the reason I think in all events it's irrelevant is the basis of my decision in refusing to admit it into evidence. Let's see if we can be as expeditious as possible here.

BY MR. PREMINGER:

Q Mr. Roth, the only evidence which the trustees had before them at the time they made a decision on Mr. Lugo's application for disability benefits, as I understand it, were the two letters from the plaintiff's physician, the letter from Dr. Krieto dated June 22, 1972 and those charts.

THE COURT: Charts, what charts?

MR. PREMINGER: Medical charts with the chart results and things like that.

THE COURT: Already introduced into evidence?

MR. PREMINGER: Yes.

Q [illegible] medical [illegible]

A [illegible]

Q [illegible] based, the entire decision is based on the test results which are given on that [illegible] that Mark, Dr. Thirtle's statements which I believe was in or three times and Dr. Simpson's two letters?

A That's right.

Q Could you now tell me, Mr. Roth, --

THE COURT: I'm not a medical expert and I quite frequently hear cases involving, without a jury, the question of injuries to those who are involved in accidents and indeed, I think pain is injuries, too, quite frequent, decide whether there is disability or injury to people, although after hearing doctors --

MR. PREMINGER: There is generally expert testimony.

THE COURT: Well, they have expert opinion. They didn't have any cross-examination, but you know what I'm trying to say, you don't have to be a medical expert to pass upon medical experts' opinions because otherwise, the jury couldn't pass on these questions.

MR. PREMINGER: I understand that, but

I'm saying in this form the testimony got there [illegible] it would be very difficult for [illegible] to make an accurate evaluation.

THE COURT: All right.

Q Would you please state what the present qualification for retirement benefits are?

THE COURT: It's in there. You have it. Do you have it here, Mr. Roth?

THE WITNESS: Yes.

MR. PREMINGER: I would like it clarified. It's a bit ambiguous here. It's a 20 year requirement but there is a bit of a question, at least my reading of it as to whether or not when the 20 years must be --

MR. ROTHFELD: Judge, might it be recorded I have a continuing objection to this line of questions regarding on the grounds the plaintiff has no standing to sue with respect to that matter.

THE COURT: Yes. Proceed.

BY MR. PREMINGER:

Q The requirement at present for new participants is that they be employed in the industry for 20 years and have an aggregate of 200 months covered --

[illegible] Court: Can't you refer to the specific paragraph, Counsel, if you can.

Q I think it's 11(1) --

THE COURT: Is it 11(1)?

MR. ROTHMAN: Retirement.

THE WITNESS: Pension retirement benefit.

THE COURT: If -- would be, that's your next question?

Q If he worked immediately prior to filing an application, is that correct, Mr. Roth?

A Yes, in other words, 20 years employment would have to be the 20 years immediately preceding to application for the pension benefit.

Q One cannot file for retirement pension until age 66, at least age 66?

A Yes.

Q Can you tell me, Mr. Roth, what the reason was for the promulgation of the eligibility requirement that a worker could not qualify for retirement pension unless he worked at least 90 months within ten years immediately preceding retirement at 66?

A Well, the trustees at that time felt that this requirement was ample to provide the benefits to the participants and still maintain actuarial sound[illegible]

are progressed, they found the stiffening of those requirements more necessary to provide for the soundness. You want to be sure there are benefits available, if for any reason contributions were to stop -- you have to make sure there are sufficient benefits to pay those approved for pension. We just can't give this money away.

THE COURT: In other words, you found you had to tighten up and if you want to have an actuarial sound from a 90 month within ten years to a 200 months --

THE WITNESS: In 20 years.

THE COURT: Although the 200 need not be immediately preceding, is that right?

THE WITNESS: No, this is interpreted as being the 20 years immediately preceding application.

THE COURT: How about the 200 months?

THE WITNESS: The 200 months would be in that 20 year period.

BY MR. FREIMUTH:

Q Mr. Roth, I quote from defendant's brief in support of their motion for summary judgment in this case: "The [illegible] product needs this service

A-380

[illegible]

[illegible] ...ment is [illegible] ...ployees [illegible] ...industry."

[illegible] ...end of the sentence for the pre... [illegible] ...ion of this value?

A That may be, but I would think primarily the actuarial soundness of the plan was the major reason for these increased requirements.

Q When was the last time that pension benefits were raised?

A The pension was increased to its present benefit in 1971.

Q How much of a raise was that?

A That was an increase from $75 to $100 a month.

Q Were you the trustee -- did the trustees decide to raise the pension at that time?

A The trustees acted to increase the benefit after they were satisfied by the actuary that the plan could sustain such an increase. The actuary had established that an increase could be maintained and the plan still be sound.

Q I show you Plaintiff's 5 for identification, [illegible] ...tuarial valuation by Martin Segal and Company of [illegible] ...ndent Fund for the year ended April 30, 1[illegible]

[illegible] Schreiber

[illegible] point of this is what he has been [illegible]

THE COURT: You can't do that. It's not in evidence. You're putting it in evidence by asking him questions about it. You can't do that.

MR. ENGELHARDT: What I was about to do, was ask him if this is the one and offer it.

THE COURT: Ask him.

Q Is this the plan (handing to witness)?

THE COURT: Not the plan --

Q The valuation upon which --

A The valuation may have been made on this study, but I believe the valuation itself may have been a later one than that attached to this study. This is the actual valuation of the fund as of April 30th, 1970. I don't see any mention of the amendment to provide increased pension benefits.

THE COURT: Or increased pension requirements?

THE WITNESS: The requirements would have been --

THE COURT: That's the 40 year?

THE WITNESS: Those requirements would have been --

THE COURT: What that has to do with your

[illegible]

[illegible]

[illegible] My question was to Mr. Rodriguez was: He had actually stated that the trustees had decided to increase benefits based on actuarial valuation.

THE COURT: Also, based upon the amendments to the plan. I mean at that time you had 20 year requirement, did you or did you not?

THE WITNESS: Twenty year requirement had been in effect and the pension benefit was paid at the rate of $75 a month.

THE COURT: Then you increased it to $100?

THE WITNESS: Increased to $100 based on --

THE COURT: When you compare that to the plan that was in effect at the time Mr. Lugo came into --

THE WITNESS: It was a different ballgame.

THE COURT: That's the reason why I said it shouldn't be admitted. I don't like to use the phrase, different ballgame, but it shows a different consideration involved here. Completely.

MR. PRUDENCIO: Might I be allowed to continue?

Q Mr. Roth, is this the valuation that the trustees used in deciding to increase the pension benefits?

A When you say, speaking of the valuation, are you speaking of this statement attached to the study?

A The study would have been used by the actuary in determining whether or not the amendment was feasible. A valuation statement would have been issued by the actuary in that it was based on this study, yes.

MR. PRINCIPATO: I now offer it.

THE COURT: Denied for reasons already indicated.

Q Mr. Roth, I show you plaintiff's Exhibit 1, Collective Bargaining Agreement dated September 23, 1970. I would ask you if you would explain Par. 11 (handing to witness)?

THE COURT: Which one is that, the latest one?

MR. PRINCIPATO: The latest agreement, your Honor.

THE COURT: That deals I look at the 11

A-384

[illegible] to an explanation of this Pay. [illegible]

THE CLERK: 11-A.

(THE WITNESS: 11-A?

THE COURT: Is that what you're talking about?

MR. DRUMMOND: That's correct.

THE WITNESS: An explanation, the five per cent of weekly wages that is contributed on behalf of each employee within the bargaining unit, those monies are further allocated, a portion of which go to the pension trust fund and another portion to the general fund out of which all other benefits are paid. Only -- you must remember only the retirement and the disability pension benefits are paid out of the pension trust fund.

What's explained further on as to the allocation of the monies. 47 per cent, Pay. 13, of the monies collected go to a separate fund, 53 per cent go to the pension trust fund.

BY MR. DRUMMOND:

Q Then it says, 'As of the first payroll

Q. [illegible]

[illegible] what does that mean?

A. Prior to that time the contribution [illegible] have been less than five per cent. It may have been four per cent. The payroll reflects the change at that time as of the first payroll week after July 1st, 1956.

Q. In other words, contributions were increased and retroactive payment was made by the employers?

A. Right.

THE COURT: You mean --

THE WITNESS: Not necessarily. That was the effective date. At the time of the amendment, I don't know if there was retroactivity involved. There was an increase effective as of that date.

MR. ROSENFELD: Judge, might I have a continuing objection to this 1956 history?

THE COURT: Yes, you have it.

Q. Mr. Roth, could you tell me what the present assets of the fund are?

MR. BOWERS: I object.

THE COURT: I don't see relevancy to that.

MR. WEINSTEIN: Mr. Roth has stated that

[illegible] eligibility requirements to maintain a fiscal integrity of the fund.

THE COURT: He's talking about the present requirement of 10 years and 200 months within that time plus the increase in the benefits, but that has nothing to do with, as I understand it, where there's any actuarial defect which excludes certain employees which indirectly would benefit the employer or even the union. I don't understand that.

MR. PREMINGER: Your Honor, it does. In order to show a rational nexus between an exclusionary eligibility requirement which this is -- there's no doubt it's exclusionary --

THE COURT: I told you in my opinion since you didn't qualify under the 65 year age requirement, that I didn't think you had a controversy before this Court for declaratory judgment as to --

MR. PREMINGER: Your Honor --

THE COURT: Please don't interrupt.

I told you I didn't think there was a controversy on that point, didn't I?

MR. PREMINGER: Yes.

A-387

Proceedings

if I didn't make that decision. I said that a man may never have to be 65 and this Court, -- you say you have a right to know. I say that this Court doesn't render advisory opinions.

When he reaches 65 and then you want to ask for declaratory judgment then or for any other reason, you claim there's been a structural defect in this plan which you'll rely on, that might be another matter.

As I see it, the only issue before this Court is whether the disability provisions are such that they constitute a structural defect in violation of the Wafe-Hartley Act.

MR. PREMINGER: Two things, your Honor. First, when contributions are made to a trust fund on behalf of a participant, by his employer, he has a financial stake in that trust fund. Those monies have been paid in lieu of present wages --

THE COURT: No, that's talk, rhetoric, which means less, when he has a financial stake. That's the whole argument that we have here. You're pulling yourself up by your bootstraps.

[illegible]

MR. PRENGER: I'm not certain I made myself clear. I would like one more chance.

THE COURT: You will have the chance you wish.

MR. PRENGER: When someone undertakes to administer a trust fund, there is a duty that fund be administered in a fair manner.

THE COURT: What could be so. Therefore, you might have to go to the State Court to claim it hasn't been administered in a fair manner.

MR. PRENGER: I'm not stating mismanagement of the fund, your Honor. I'm saying it must be administered in a fair manner. The requirements that are established, that must meet the requirements of the Welfare-Pertley Act.

THE COURT: Of course.

MR. PRENGER: When a trust fund pays benefits at a low level not in accordance with the source of money which the trust fund has available to it, the amount of money it's

making that given years, and that's something wrong.

THE COURT: What's a violation of the Wolf-Handley Act?

MR. PREMINGER: That's correct.

THE COURT: I overrule that. Don't take any more of my time on this argument. Mr. Preminger, I've been very patient with some of your arguments. I've been trying to give you ample opportunity and ample consideration, but some of your arguments are simply sophistry which we sometimes used in law school.

I'm deciding against that argument now. You have your right to appeal. I can't waste any more time on those kinds of arguments.

MR. PREMINGER: The second thing, I thought you said you would deem the complaint amendment to include attack against the regulations stating that an employee must work 90 months within ten years immediately preceding retirement at the age of 55.

THE COURT: If you could prove he was at the age of 55 and since he wasn't and it didn't comply with the first requirement, there is no

A-390

MR. PREMINGER: I assumed your Honor had stated we could attack the provision requiring he be 66.

THE COURT: No, then I misled you. You can't do it unless he proves he is 66. Go ahead. Do you have anything further?

MR. PREMINGER: Anything that had had to do with an attack on the 90/10 rule? You're claiming I do not have standing.

THE COURT: I say that is not proper predicate for a declaratory judgment in this particular case. If your plaintiff is 66 years of age, he has to state -- that he isn't.

A-391

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Do you have anything to add, Mr. [illegible]?

MR. [illegible]: Nothing further, no.

THE COURT: I'm sorry, gentlemen, then this ends the case, Mr. [illegible]?

MR. ROSENFELD: A brief statement, Judge; nothing further with Dr. Roth.

THE COURT: Do you want more testimony?

MR. ROSENFELD: Offer of proof, Judge.

THE COURT: What's the offer of proof?

MR. ROSENFELD: Offer of proof, Judge, to show that defendant is prepared at any time the Judge would permit to produce Dr. Kriste for the purpose of establishing that your Honor does not wish to make a finding on; namely, that the plaintiff was not disabled within the meaning of the trust agreement.

THE COURT: I don't think that has anything to do with the issues before the Court. I don't think -- Mr. Rosenfeld on this one point agrees with me.

MR. [illegible]: That's correct, Your Honor.

A-392

make his offer.

THE COURT: I've read it several times. It's [illegible] on the co-called disability of the plaintiff, although I felt it was not in issue.

Now, any other offer of proof?

MR. ROTHFELD: No.

THE COURT: What else do you have to offer?

MR. FREMINGER: Nothing further, your Honor.

THE COURT: What else do you wish to hear?

MR. ROTHFELD: Nothing further.

THE COURT: I'll go back and decide it.

MR. FREMINGER: Your Honor, would you like proposed findings of fact in the law?

THE COURT: Yes, I guess I could get it from both.

Can't you -- can you make them, Mr. Rothfeld? I would say this: I don't know if you need any proposed findings. I suppose -- why don't you let me think about it, go over my notes. I might be able to do it faster in a sense that quite frequently [illegible] give the proposed findings of fact, conclusions of law they use in such detailed form

[illegible] very helpful to the Court.

Let me look at it and, Mr. Hochheiser, there is something else I will do. I will go over it. Call up Friday. By that time I shall have done my everything. I have a couple of cases tomorrow and the next day.

MR. HOCHHEISER: We all do, Judge.

THE COURT: I feel sorry for you.

I'm not one-half as busy as you are.

Call me Friday and either I or my Law Clerk will let you know if I have findings of fact.

(Time noted: 5:00 o'clock p.m.)

* * * *

E X H I B I T S

PLAINTIFF'S	DESCRIPTION	FOR ID	IN EVD
1	Agreement dated 9/23/70		34
2	Description of pension plan		35
3	Letter from Mr. Roth, 4/5/73		36
4	Survey of 100 pension plans		54
5	Pretrial order	54	
6	Annual report		55
DEFENDANT'S			
A	Description of pension plan		79
B	Claim Form		79
C	Letter dated 12/23/71		80
D	Note dated 5/23/72		81
E	Refund application	81	
F	LB3 Department of Labor form		92
G	MB3 Department of Labor form		92
H	Action copy of request for review		103
I	Letter of Mr. Kelsey		115
J	Medical History, 5/24/72		116
K	Letter dated 10/17/71		128

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

JUAN SANCHEZ LUGO,

Plaintiff,

-against-

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, et al.,

Defendants.

73-C-663

----------x

Appearances:

JOHN C. GRAY, JR., ESQ.
Attorney for Plaintiff
DAVID S. PREMINGER, ESQ.
Of Counsel
Brooklyn Legal Services
Corporation B
152 Court Street
Brooklyn, New York 11201

E. JUDSON JENNINGS, ESQ.
JONATHAN A. WEISS, ESQ.
Legal Services for the Elderly Poor
2095 Broadway, Room 304
New York, N.Y. 10023
Of Counsel

MENAGH, TRAINOR & ROTHFELD, ESQS.
Attorneys for Defendants
130 East 40th Street
New York, N.Y. 10016
NORMAN ROTHFELD, ESQ.
Of Counsel

BARIELS, D.J.

Plaintiff Juan Sanchez Lugo, a former worker in the Illumination Products Industry, brings this action for declaratory and injunctive relief under §302 of the Taft-Hartley Act ("Act"), 29 U.S.C. §186, [1] against the Employees Retirement Fund ("Fund") of that industry and the trustees thereof, upon the ground that the Fund is not in compliance with the Act. He claims that two aspects of the agreement establishing the Fund constitute structural defects in violation of the Act, to wit: the failure of the agreement to provide (1) a hearing for an applicant for disability benefits on the issue of his disability, and (2) for vesting of rights to standard retirement benefits before the retirement age insofar that an applicant is required to attain the age of 60 and to have been employed or available for employment by contributing employers for 20 months within the ten years prior to his application. In October, 1973, on defendants' motion to dismiss the complaint, the Court ruled that it has jurisdiction to determine whether the above claims constitute violations of the Act which requires that the Fund be "for the sole and exclusive benefit of the employees." 29 U.S.C.

§186(c)(5). (Lugo v. Employees Retirement Fund of the Illumination Products Industry, 366 F.Supp. 99 (E.D.N.Y. 1973)). On October 21, 1974, a trial was held before the Court without a jury to determine whether the agreement was, in fact, "for the sole and exclusive benefit of the employees." Accordingly, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff was continuously employed in the Illumination Products Industry from 1955 to 1972.

2. Plaintiff left his last position in the industry, at Majestic Inc., 535 Sackett Street, Brooklyn, New York, in April, 1972, because he felt he was physically unable to continue working there.

3. When he stopped working, plaintiff was 50 years old and had worked for more than 90 months within the previous ten years.

The Agreement

4. The Fund is administered by the Joint Retirement Committee ("the Committee") in accordance with the provisions of an Agreement negotiated between the representatives of

contributing employers in the industry and the unions representing the workers in the industry.

5. Paragraph 5 of the Agreement provides that "The determination in good faith by the Committee of any matter or question under this Agreement shall be final and conclusive." (Emphasis supplied.)

6. Paragraph 18.2(b) provides that the Committee is to be the sole judge of the facts as to whether an applicant is "disabled" to the extent required for eligibility for the Disability Pension Benefit.

7. Paragraph 20(c) requires the Disability Pension application to contain a clause stating that "The Committee has the power to prescribe a medical and/or physical examination (the cost to be borne by the Fund), and that the applicant will agree to such an examination before his application will be considered by the Committee."

8. Paragraph 20(a) provides that "The Committee's action in approving or disapproving any application shall be final. A rejected applicant shall have no right or claim of any kind against the Committee, the Union, the Employer, or Employers."

Plaintiff's Application for Disability Benefits

9. Plaintiff duly applied for Disability Benefits on April 13, 1972, and, in addition, applied for Standard Retirement Benefits.

10. To be eligible for Disability Benefits, plaintiff was required (1) to have been employed or available for employment by contributing employers for at least 10 years and have an aggregate of 90 months employment within the 10 years immediately preceding his application (the 90/10 requirement); and (2) to be permanently incapacitated or disabled to the extent that he could no longer secure gainful employment.

11. The application contains the following statement: "The applicant agreed to submit to a medical and/or physical examination (the cost to be paid by the Fund) before this application is presented to the Trustees."

12. The reverse side of the application contains the following instruction: "Obtain a letter from Doctor describing your disability in the fullest detail possible."

13. In support of his application plaintiff submitted two letters from his physician, Emily C. Simpson, M.D.

The first, dated December 23, 1971, stated that plaintiff was found to have "moderate elevation in his blood sugar" and the second, dated May 22, 1972, stated that plaintiff was being treated for "diabetes melitus" and was in "fair" condition.

14. The Pension Committee of the Electrical Industry maintains a staff of doctors at its Medical Facility, on both a full-time and retainer basis, and these doctors, among other duties, perform examinations in connection with applications for Disability Benefits under the Retirement Plan of the Illumination Products Industry.

15. On May 24, 1972, in accordance with the Fund's procedure, plaintiff was duly examined, pursuant to his disability application, by doctors at said Medical Facility.

16. After examination at the Medical Facility on May 24, 1972, a report was issued by W.T. Kriete, M.D., Medical Director of the Pension Committee, stating that plaintiff "was found to have diabetes as well as a visual disturbance which is correctable by glasses," and that he did not "consider this man disabled."

17. On September 27, 1972, after considering the letters from Dr. Simpson and the report of Dr. Kriete, the

plaintiff was found to be ineligible for disability benefits.

18. Plaintiff was given no opportunity to appear in person before the Committee nor was a hearing held where he or his attorney were able to cross-examine the Fund's doctors or to offer additional evidence of their own.

19. While plaintiff was found to have satisfied the 90/10 requirement, he was declared ineligible for disability benefits because the Committee found that he was not in fact disabled.

Plaintiff's Application for Standard Benefits

20. To be eligible for the Standard Pension Benefit, plaintiff was required to attain the age of 60 and, in addition, meet the eligibility requirements in effect at the time he joined the industry in 1955, which required an aggregate of 90 months of employment or availability for employment by contributing employers within the 10 years immediately preceding the filing of his application.

21. Plaintiff was found to be ineligible for the Standard Pension Benefit because he had not attained the age of 60 at the time of his application.

22. The eligibility requirements of the Fund have

been increased from time to time for new employees in the industry so that at present, in order to be eligible for the Standard Retirement Benefit, an employee must attain the age of 60 and have been employed or available for employment by contributing employers for 200 months within the 20 years prior to his application.

23. The above requirements are provided primarily for actuarial soundness.

24. Of the 100 largest retirement plans in 1971, 90 had some type of vesting provision whereby a participant acquired rights at certain specified times, as the case may be, in accrued benefits before reaching the retirement age. Sixty-nine of these 90 had a type of deferred vesting whereby the participant would not receive payment until a certain age was reached, and only 17 of the 90 provided for immediate vesting upon termination of participation in the plan.

25. The Retirement Fund of the Illumination Products Industry does not provide for any such vesting and a participant who ceases participation prior to meeting the requirements, has no rights in the Fund.

26. The fact that many of the 100 largest retirement funds provide for vesting in one form or another has,

without more, no bearing on the reasonableness or rationality of the structure of the Fund at issue.

CONCLUSIONS OF LAW

1. The Court has jurisdiction under §302(e) of the Act to determine whether the provisions of the Agreement here challenged constitute structural defects in violation of §302(c)(5) of the Act. Lugo v. Employees Retirement Fund of the Illumination Products Industry, supra.

2. The Act was intended "to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers." United States v. Ryan, 225 F.2d 417,426 (2d Cir. 1955), (L. Hand, C.J., dissenting), rev'd, 350 U.S. 229 (1956), and Courts must keep this purpose in mind in interpreting the literal language of the Act. "There is no surer guide in the interpretation of a statute than its purpose when that is sufficiently disclosed: nor any surer mark of over solicitude for the letter than to wince at carrying out that purpose because the words used do not formally quite match with it." Federal Deposit Ins. Corp. v. Tremaine, 133 F.2d 827,830 (2d Cir. 1943), (L. Hand, C.J.). Thus, the fact that the

plan to which the employer agrees to contribute might indirectly further the economic interest of the employer by retaining experienced employees, does not prevent it from being "for the sole and exclusive benefit of the employees," where the plan is contained in an agreement freely and openly arrived at by representatives of the employers and employees. Roark v. Boyle, 439 F.2d 497,505 (D.C.Cir. 1970).

3. The Act does not confer a general power upon the Court to interfere with the provisions of an agreement freely entered into between the Union and the employers regulating pension coverage and eligibility. Moglia v. Geoghegan, 267 F.Supp. 641 (S.D.N.Y. 1967), affirmed, 403 F.2d 110 (2d Cir. 1963), cert. denied, 394 U.S. 919 (1969).

4. The absence of a provision for a hearing on plaintiff's application for disability benefits does not constitute a structural defect converting the Fund into one not "for the sole and exclusive benefit of the employees." In this respect the employees are protected from possible disloyalty of the officials administering the Fund by the "good faith" requirement of Paragraph 5 of the Agreement, which requires the Committee to make a bona fide determination of disability and to administer the Fund for the sole and exclusive benefit

of the employees. Upon the failure of the Committee to comply with this obligation, the employees have ample remedy in the state courts for the Committee's breach of its fiduciary obligation. Cf. Insley v. Joyce, 330 F.Supp. 1228,1234 (N.D.Ill. 1971); Bowers v. Ulpiaho Casal, Inc., 393 F.2d 421 (1st Cir. 1968); Giordani v. Hoffmann, 295 F.Supp. 463 (E.D. Pa. 1969); Porter v. Teamsters etc., Funds, 321 F.Supp. 101 (E.D.Pa. 1970).

5. Plaintiff's challenge to the requirements for Standard Retirement Benefits is essentially a challenge to the failure of the pension plan to provide for vesting of rights prior to the age of 60. Plaintiff having retired at the age of 50, will not be eligible for a pension when he reaches the age of 60 since he will not have met the 90/10 requirement. The essence of his complaint on this score is that he is denied benefits which others with equal periods of service who have reached the age of 60 will receive. It is not necessary that a plan confer equal benefits upon all employees regardless of their differences in age and periods of service. Nor is it necessary for all pension plans to contain vesting provisions. See Roark v. Boyle, supra, 439 F.2d at 504-07. 2/

6. The Fund's eligibility requirements for Standard Retirement Benefits have not been shown to be either arbitrary, capricious or unreasonable. Insley v. Joyce, supra, 330 F.Supp. at 1253. On the contrary, they appear to be designed in good faith to provide for the actuarial soundness of the Fund.

7. For the reasons stated above, we find that plaintiff has failed to establish any structural defects in the Fund constituting violations of the Act.

8. Since the claims constituting the basis for Federal Court jurisdiction are found to be without merit, the Court declines to take pendant jurisdiction over plaintiff's claims under state law.

Complaint dismissed. SO ORDERED.

Dated: Brooklyn, N.Y.,
January 17, 1973.

United States District Judge

FOOTNOTES

1/ Section 302 of the Taft-Hartley Act, 29 U.S.C. §186, provides in pertinent part:

"(a) It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value—

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce; or

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions or duties as a representative of employees or as such officer or employee of such labor organization.

(b) (1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) of this section.

...

(c) The provisions of this section shall not be applicable ... (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute,

or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities."

2/ The recent enactment of the Pension Reform Act (The Employee Retirement Income Security Act of 1974), P.L. 93-406, which now requires vesting provisions in pension plans, and the long legislative history leading up to its enactment, offer ample evidence that Congress never viewed §302 of the Taft-Hartley Act as requiring vesting provisions in pension plans. See Roark v. Boyle, supra, 439 F.2d at 504-07.

October 29, 1974

Honorable John R. Bartels
United States District Judge
United States District Courthouse
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

re: Sanchez Lugo v. The Employees Retirement Fund of the Illumination Products Industry, et al
73 CIV 663

Dear Judge Bartels:

This letter is written in order to clarify a point which I attempted to make at the trial of the above-referenced matter but which I did not make with sufficient accuracy.

This case was brought for a two-fold purpose. The first matter at issue was the question of the right to a hearing for disability pension applicants. The second concerned the unfairness and illegality of the defendant Retirement Fund policies due to an exclusionary eligibility requirement, the so called 90/10 Rule, with which this letter is concerned.

The plaintiff did not challenge this rule as illegal on its face. Were it simply a service requirement that an employee could have fulfilled during any stage of his employment it would have been much less susceptible to attack, if at all.

The problem arose because the 90 months had to be worked in the 10 years immediately preceding the filing of an application for retirement benefits and an applicabion could not be filed until at least age 60. This requirement becomes evey more exclusionary when read in conjunction with the requirement that to qualify for a disability pension an applicant must be disabled to the extent that he can no longer work in the industry, or in any other line of business.

These two eligibility requirements, one for a retirement pension and one for a disability pension, are inextricably interwoven. One need only consider the case of an individual who becomes disabled to the extent that he can no longer work in the industry but is able to do other work. Such an individual does not qualify for disability pension and, because he must work 90 months within the 10 years immediately preceding filing of an application for retirement pension, he will not be able to qualify for this pension either.

Because the plaintiff currently has standing to challenge the requirements for disability pension, then, due to the interlocking nature of the disability and retirement pensions, the plaintiff also has standing to challenge the 90/10 Rule.

Very truly yours,

David S. Preminger

DSP:em

cc: Menagh, Trainor & Rothfeld
130 East 40th Street
New York, New York

Attention: Norman Rothfeld, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUAN SANCHEZ LUGO, Plaintiff,	:	
THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, CHARLES F. ROTH, individually and in his capacity as Assistant Executive Secretary of the Employees Retirement Fund of the Illumination Products Industry, and KENNETH CEPPOS SIMON GRAFSTEIN, LEONARD GOLUB, HANNIBAL IMBRO, JOHN H. KLIEGL II, EDWARD R. MURPHY, JERRY SCHNEIT, ROW SIMES, MEYER TEITELBAUM, WALTER WEISS, ALBERT BAUER, SOL BERMAN, JOSEPH BONO. STEPHEN KANTOOSKY, KAREL MRNKA, JOHN SCIACCA, LOUIS STEIN, THOMAS VAN ARSDALE, HARRY VAN ARSDALE, JR., and SANTOS ZAPPATA, as trustees of the Employees Retirement Fund of the Illumination Products Industry, Defendants.	:	CIVIL ACTION NO. 73 C 663 NOTICE OF APPEAL

PLEASE TAKE NOTICE that the plaintiff, JUAN SANCHEZ LUGO hereby appeals to the United States Court of Appeals for the Second Circuit from the final judgment and order of the Hon. John R. Bartels, United States District Judge,

A-413

Eastern District of New York, entered by the Clerk of said Court on the 20th day of January, 1975 and from each and every part of said judgment and order.

DATED: New York, New York
February 7, 1975

JOHN C. GRAY
Brooklyn Legal Services Corp. B
152 Court Street
Brooklyn, New York 11201
(212) 855-8003

DAVID S. PREMINGER
Legal Services for the Elderly Poor
2095 Broadway, Room 304
New York, New York 10023

Attorneys for Plaintiff

TO: Menagh, Trainor & Rothfeld
130 East 40th Street
New York, New York 10016

Attorneys for Defendants

MEDICAL DEPARTMENT • PENSION COMMITTEE
JOINT INDUSTRY BOARD OF THE ELECTRICAL INDUSTRY
158-11 JEWEL AVENUE • FLUSHING, N.Y. 11365 • 591-2017

HON. ARMAND D'ANGELO
Chairman, Joint Industry Board of the Electrical Industry

• • •

Trustees
ALFRED P. MINERVINI
Chairman
GEORGE W. KLEINKNECHT
Treasurer
THOMAS VAN ARSDALE
Secretary
EDWARD J. CLEARY
Trustee

• • •

HON. ROBERT F. WAGNER
Public Member
DONALD F. MENAGH
Counsel

• • •

Employer Representatives
JAMES ANDREWS
ALLEN D. FISCHBACH
ROBERT A. GOELLER, SR.
EFREM A. KAHN
THEODORE KAISH
GEORGE W. KLEINKNECHT
JOHN J. MARCATO
ALFRED P. MINERVINI
CHARLES SALZHAUER
HERBERT TIPPERMAN

Employee Representatives
JOSEPH CHALOUPKA
EDWARD J. CLEARY
HARRY J. GAVIN
JOHN KROMER
EDGAR MALONEY
FRANK MONTEMAGNO
CHRISTOPHER PLUNKETT
FREDERICK STEIN
HARRY VAN ARSDALE JR.
THOMAS VAN ARSDALE

WILLIAM T. KRIETE, M.D.
Director

October 17, 1974

Mr. Norman Rothfeld:

Re: Juan Sanchez Lugo

Dear Mr. Rothfeld:

The above was examined in this Medical facility on 5-24-72. At that time he gave a history of elevation of blood sugar and visual disturbance. Dr. Tober's tentative diagnosis was: 1. Diabetes Mellitus. 2. Diabetec Retinopathy. Laboratory studies on 5-24-72 were as follows: Urinalysis: 4+ sugar. Blood count: normal. EKG done on 5-24-72 was normal. Interpretation by Dr. Charles Mistretta. Chest x-ray done on 5-24-72 was negative. Interpretation by Dr. Victor McGrattan. Laboratory studies on 5-27-72: Glucose Tolerance test: Diabetic curve. Serology: negative. On 5-31-72, the patient was examined by Dr. Frances Stavola and an eye refraction was done. On 6-3-72, the patient was examined in Ophthalmological consultation by Dr. A. Winter. At that time, the patient complained of frequent changes in eyeglasses. Examination of the fundi revealed no abnormalities. Intraocular tension was normal. It was Dr. Winter's recommendation that refraction be repeated after his diabetes had been stabilized for a 3 to 4 month period.

On the basis of this medical evidence, I could not consider this man disabled.

Very truly yours

W. T. Kriete, M.D./P.C.

W. T. Kriete, M.D.
Medical Director

WTK:pc

DEFENDANT'S EXHIBIT
A

A-415

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

JUAN SANCHEZ LUGO,

Plaintiff-Appellant,

-against-

THE EMPLOYEES RETIREMENT FUND OF THE ILLUMINATION PRODUCTS INDUSTRY, et al.,

Defendants-Appellees.

----------x

AFFIDAVIT OF PERSONAL SERVICE

DOCKET NO. 75-7128

STATE OF NEW YORK)
ss.:
COUNTY OF NEW YORK)

PEGGY KAMENS, being duly sworn, deposes and says:

Deponent is not a party to the within action, is over 18 years of age and resides at 509 W. 122 St., NYC 10027.

That on the 27th day of June 1975 deponent served the within Appellant's Brief & Joint Appendix upon Menagh, Trainor & Rothfeld, 130 E. 40th Street, N.Y.C., attorneys for appellees,

by delivering a true copy thereof to the receptionist at said address.

Deponent knew the person so served to be the person mentioned and described, because she identified ~~himself~~/herself to deponent.

Peggy Kamens
PEGGY KAMENS

Sworn to before me this
27th day of June, 1975.

David S. Preminger

DAVID S. PREMINGER
NOTARY PUBLIC, STATE of NEW YORK
No. 4509060
QUALIFIED in NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1977

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

LEGAL SERVICES FOR THE ELDERLY POOR

Attorney for

Office and Post Office Address

2095 Broadway—Suite 304

Borough of Manhattan New York, N. Y. 10023

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

LEGAL SERVICES FOR THE ELDERLY POOR

Attorney for

Office and Post Office Address

2095 Broadway—Suite 304

Borough of Manhattan New York, N. Y. 10023

To

Attorney(s) for

Index No. 75-7128 Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JUAN SANCHEZ LUGO,

Appellant,

-against-

THE EMPLOYEES RETIREMENT OF THE ILLUMINATION PRODUCTS INDUSTRY, et. al.,

Appellees.

AFFIDAVIT OF PERSONAL SERVICE

DAVID S. PREMINGER, ESQ.
LEGAL SERVICES FOR THE ELDERLY POOR

Attorney for Appellant

Office and Post Office Address

2095 Broadway—Suite 304

Borough of Manhattan New York, N. Y. 10023

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

© 1300-GOLDSMITH BROS. 77 NASSAU ST., NEW YORK, N. Y. 10005